operator is involved in an accident while not under lease. Would not this undesirable condition be entirely eliminated when the arrangements are made between responsible carriers and when both carrier-lessor and carrier-lessee are adequately insured?

A. No, not necessarily. That is one of our problems, because our present insurance requirements apply only to transportation authorized by ourselves or subject to the regulation of the Commission. Even though the carrier may have insurance, the insurance doesn't necessarily cover accidents caused by his trucks when they are not engaged in service subject to our jurisdiction. So as to the time between the time the lease ends to another carrier and the time he gets back into service subject to our jurisdiction, there might be a lapse.

Now, I believe most of the policies themselves do cover that period, but it is not part of our requirement.

Q. Do you mean to say that if a private carrier who had completed a trip lease and who was adequately insured according to your requirements was on his way home without a load and had an accident that he would not be responsible to the public?

A. There is no private carrier who is insured in accordance with our requirements.

[fol. 1356] Q. Maybe I had better change that to reasonable requirements.

A. If a private carrier is covered by insurance that would protect any person hurt while he is driving on the highway between leases, the public would be protected, yes, but there is no requirement on our part that he be protected during that period.

Q. The evils which you are trying to eliminate would be greatly reduced if leasing arrangements were entered into by responsible carriers, whether authorized or unauthorized, would they not?

A. You mean reduced from what they are now or what they could be if they used unauthorized carriers?

Q. What they are now.

A. I am not sure that would be true.

Q. Would not the need for the elimination of trip leasing

and the stringent regulations of short-term leasing be eliminated where there are bona fide business contracts between responsible corporations?

A. I again don't know what those business contracts would contain so I couldn't tell.

Q. In order to eliminate the evils resulting from irresponsibility your proposed order appears to penalize, limit or completely prevent future arrangements between agencies which are fully responsible and who have in no way been instrumental in their creation. Is that not true?

A. Well, the only thing of that type that I can think of [fol. 1357] that the regulations would prohibit would be to prohibit the power units of one authorized carrier running over the route of another authorized carrier.

Q. Your proposed regulations, I believe, eliminate the possibility of motor carriers who are not authorized from trip leasing to motor carriers who are authorized?

A. Not in the fourth proposal, which is to permit trip-leases subject to certain regulations. That would permit, subject to the restrictions in there, trip-leases by a non-carrier to a carrier.

Q. It would seriously penalize and limit operations between responsible parties in order to eliminate the existing abuses that result from irresponsibility?

Exam. Lawton: Are you putting that as a question, Mr. Hufnagel?

The Witness: I am not clear what you mean by responsible parties. If you mean that it would prohibit a responsible authorized carrier from leasing equipment to a responsible shipper, that would be true, but the fact that they are responsible has nothing to do in our case with the objection to the practice.

Mr. Hufnagel: That is all.

Exam. Lawton: Is there anyone else?

Cross-examination.

By Mr. Wrape:

Q. Mr. Blanning, in your response to Mr. Todd's ques-[fol. 1358] tion, you indicated that there was some differ-

ence in your mind as to an arrangement with a gypsy and an arrangement which might be otherwise described as a spot lease or a short-term or trip-lease. Was that correct, sir?

A. I don't recall that I made distinction there, although I have thought of it in connection with a breakdown they have asked me to make. But there is a distinction in the nature of the objection to the use of a gypsy on a one-way trip basis and the leasing of the truck of another carrier on the one-way lease basis.

Q. Perhaps, sir, if you would give us your definition of a gypsy it might suffice.

A. The gypsy as given in my prepared testimony was a person who was a "truck owner who is in the business of making one-way trips for any carrier which would employ him in any city in which he happened to be."

Q. And where you have used the term "gypsy", you have meant that kind of a person?

A. That is right.

Q. You have used the words "desirable" and "undesirable" many times. Do you use those in their accepted or dictionary definition?

A. I am not sure what the dictionary definition is.

Q. What do you mean when you say something is undesirable?

A. That there are certain things in connection with the [fol. 1359] practice which interfere with the proper regulation and stability of the motor carrier industry.

Q. That is the extent of your use or your meaning in the use of that word?

A. And also including the protection of the public in matters of safety.

Q. In your proposals in the order in MC-43, you have four rules. Rule 1 would apply where those terms are used in Rules 2, 3, and 4?

A. You are referring to the proposal attached to the order?

Q. Yes, sir.

A. Those definitions apply to that all through the order or all through the regulations.

Q. You have divided the three rules into three different headings or three different situations. Would the regulations that are proposed under Rule 2 be all that would be necessary if the Commission found that they should prescribe rules relating to the augmenting of equipment by authorized carriers? In other words, would it be necessary for the Commission to apply the regulations in Rules 3 and 4 if they only intended to prescribe rules relating to the augmenting of equipment?

A. They would, because the one with relation to the augmenting of equipment, I believe, prohibits entirely interchange of equipment between contract carriers and if Rule 3 were not also adopted and Rule 2 were, there would be no [fol. 1360] permissible interchange of equipment between carriers.

Q. In other words, the rules are not complete in themselves with respect to dealing with the particular subject that seems to be the heading of the rule?

A. That may be true. I haven't looked at it from that position.

Q. What was your intention when you formulated these rules?

A. That if the regulations were adopted all of the regulations would need to be adopted either in this form or with any part of them thrown out or revised.

Q. Now, yesterday I don't know whether it was in your direct testimony or in the early part of your cross examination, but the inference seems to have been created that the Bureau did not believe that a lease arrangement where the compensation was related to the percentage of revenue was in fact a rental agreement. Was that what you intended to convey? You gave some examples, you will recall, about not renting your house on a basis of the revenue taken in or something like that.

A. That was not intended as a statement of the Bureau's position. We are taking no position in regard to any one of the proposals that are here. Everything that is in these rules is the result of suggestions made by people in the industry.

Q. I understand. You said that yesterday.

A. The concept that was used in connection with that particular proposal was that if a person is going to use equipment he does not own, he should rent it and if he [fol. 1361] rents it, he rents it for a certain amount of money, regardless of how much he makes out of it.

Q. Well, if you relate it to the percentage of revenue it is so much money, isn't it?

A. Yes, but the rental would depend upon how much you make from the use of the property, the concept of that being that that is not a normal method of renting equipment.

Q. You don't mean there are contracts of real estate where the rental is based on revenue or a percentage of the revenue?

A. I understand that that is so, but it is not the normal method.

Q. You don't understand that is the national practice with respect to chain stores?

A. No. I don't know of more than one chain store that does it. Whether other stores do, I don't know.

Q. It is not a practice where you have sharecropping, where one-third of the corn and cotton is paid for rental?

A. I know of the sharecropping practice. I didn't know it was considered leasing.

Q. Again with respect to the proposed rules, was it your purpose in formulating those rules to prescribe regulations which are not presently prescribed under the existing rules and regulations?

A. Yes.

Q. In other words, where you would require that the driver be an employee it is not your concept of your present rules that a driver is required to be an employee of the driver?

[fol. 1362] A. No, my concept of the law presently is that he doesn't have to be and in the statement in Exhibit 1 I made the definite statement that Ruling 4 is no longer a correct statement of the law.

Q. And that is true with respect to all of the other regulations that would be prescribed if these rules were adopted?

A. With the exception that some of the provisions for keeping records are for the purpose of obtaining evidence as to whether or not there is a violation of present law.

Q. That is with respect to the requirement as to the manifest and similar requirements?

A. That is right.

Q. You have said numerous times, sir, that neither you nor the Bureau was advocating or sponsoring these regulations and that at this time you had no opinion as to their desirability or undesirability. That is true, isn't it?

A. You asked me what the definition was of the word "desirability." I would say rather that I have no opinion as to whether they should be enacted in this form at this time.

Q. Do you expect to indicate, before the conclusion of this hearing, the attitude of yourself or the Bureau with respect to the desirability or undesirability of the regulations that are attached to the order?

A. I don't expect to, no.

Q. Would you expect to do that by way of brief or anything like that?

[fol. 1363] A. I don't know whether we will do it by way of brief or not. The situation is that having for eight years been trying to find the cure for a situation that is bad and being unable to get my own mind made up in view of the differences of opinion in the industry and otherwise, we had this set down to let the Commission decide what the cure should be after the evidence is put in and the arguments are put in by the carriers. My present intention is that when I get off the stand I have no further connection with this proceeding. It is then the Examiner's baby, followed by a decision by the Commission itself. My present intention is that we will not recommend the adoption of any particular regulations.

Q. Nor the desirability as to a particular regulation?

A. That is my present intention.

Mr. Wrape: Thank you.

Exam. Lawton: Anyone else?

Mr. Floyd: If you please, Mr. Examiner, just a few moments.

Exam. Lawton: Your name, please?
Mr. Floyd: My name is Floyd.

Cross-examination.

By Mr. Floyd:

Q. Mr. Blanning, I don't believe there is any need to qualify you as an expert on the fact that there has been a great change in our country over the last few years where our heavy industry has found other points inland and so forth. Is that correct? Do you recognize that fact?
[fol. 1364] A. There has been a change in the location of heavy industry to some extent, yes.

Q. And in these heavy industries, machines that used to be rather small have now grown to large proportions which require special handling and moving from place to place?

A. I don't know whether there has been any increase in that or not.

Q. Are you acquainted with what is normally called the heavy hauling industry of the trucking industry?

A. Yes.

Q. Are you acquainted with the fact that they do use peculiar or particular types of equipment such as lowboys, carry-alls, and so forth, for the transportation of heavy machinery?

A. That is right.

Q. And that does fill a particular need in our present day industrial area, is that correct?

A. That is correct?

Q. Are you acquainted, generally speaking, with the scope of the average heavy hauler's permit from the Interstate Commerce Commission, that is, approximately how wide it might be?

A. I don't believe I am, not generally.

Q. And you wouldn't be in a position to say that perhaps the average might not cover more than one or two states or maybe three or four at the most?

A. I don't know.

[fol. 1365] Q. Now, if that were the effect and a large factory is located in Knoxville, Tennessee, and it has a

particular machine broken down, on which the factory depends and that machine is only available in Chicago and there is no certificated carrier to handle that machine from Chicago on to Knoxville, would it not be desirable that some arrangement be made so that that machine might be transported quickly?

A. Oh, yes. That is the purpose of our set-up for handling temporary authorities.

Q. Temporary authorities, Mr. Blanning, would not get that machine to the plant in less than two weeks.

A. We can grant temporary authorities within an hour after the person has made the request in California. We don't always grant them.

Q. I withdraw that remark. I am sorry about that. Let us put it this way, that over a considerable period of time these so-called heavy haulers, machinery movers, have been using an arrangement of leasing to each other which we may call operating rights or whatever you want to call it, a term of lease, whereby when they need a machine, as I have just described, they are able to render that service because of the limited scope. Are you acquainted with that fact?

A. No, I don't see the reason for it in the situation you described.

Q. Because there was no authority, no carrier handling [fol. 1366] that heavy machinery with authority to go from Chicago to Knoxville that we knew of?

A. But the carrier could get the authority.

Q. Very quickly by this so-called lease arrangement?

A. No, not by lease arrangement, but temporary authority.

Exam. Lawton: I take it you are going to develop that by testimony?

Mr. Floyd: Yes, sir, if you please, sir. I merely wanted to raise this point at this time.

By Mr. Floyd:

Q. But generally, as a matter of lease or some sort of agreement between them, they are able to render that

service quickly. Would you say that such a leasing arrangement would not be in the interest of the public?

A. I am not even sure of the arrangement. I am not familiar with any arrangements between heavy haulers by which they use each other's equipment.

Q. That is loosely termed a lease arrangement?

A. I am not familiar with any situations where when a heavy piece of equipment has to move from Chicago to a point beyond the authority of any carrier who has the right to pick it up in Chicago, that authority can't be granted on very short notice by which that equipment can move on the equipment of an authorized carrier if that carrier wants to run his equipment through and make the delivery.

Q. Which is almost a necessity because of the size of the [fol. 1367] piece of equipment or the article or whatever it is. It is impossible to transfer and so forth en route.

A. I presume what you mean, if I get you right, is that there is a carrier who has a right to serve Knoxville and we will say, up as far as Louisville, and another carrier has a right to serve Chicago and down as far as Louisville and instead of the carrier at Chicago getting a temporary authority to run that piece of equipment to Knoxville, he will carry it to Louisville and then theoretically lease his equipment to the other carrier and pay that fellow a division of the gross revenue because the destination happens to be in his territory?

Q. That is correct.

A. I didn't know that practice was current, but I don't see that the public would be handicapped or is given any advantage because of its existence or would be handicapped by its being forbidden.

Q. In other words, the fact that the quick transportation of that machine can be depended on, which otherwise would throw a great many people out of work, you would not say that would be any benefit to the public if that machine were not quickly replaced?

A. We have given temporary authorities for temporary movement of that type quicker than he could make an agreement with the carrier he wanted to work with.

Q. Of course, if there were some proper arrangement worked out where that could be done through these well

[fol. 1368] known certificated heavy haulers, would that not be preferable?

A. I am not sure.

Q. Would it be worthy of consideration?

A. Oh, yes. That is what this proceeding is for, is to give consideration to such things. I don't see any advantage to the public or to the shippers in the arrangement you are talking about as to the type of situation you were describing, and there are a number of disadvantages to the public where that equipment is running over another man's rights without the other man being there to know anything about it.

Q. As we have just described it, we have a peculiar condition in which we sometimes move rather quickly in those things and have found it advantageous to handle it through this so-called leasing arrangement. I was particularly desirous of having your opinion as to whether or not, properly handled, that sort of arrangement might not well be continued in the public interest, properly handled and administered?

A. I don't know that there is enough of a situation to give an opinion on as a general matter. You gave a specific example where in my opinion it wouldn't be in the public interest.

Exam. Lawton: I think that is enough on that. Why don't you wait until you get your evidence to bring out and develop those things? That is what the hearing is for.

Mr. Floyd: That will be all, Mr. Examiner. I just wanted to get Mr. Blanning's opinion on it.

[fol. 1369] Exam. Lawton: Does anyone else have any questions?

Cross-examination.

By Mr. Eldred:

Q. Mr. Blanning, did you consider the situation as you found it affected other forms of transportation?

A. Other forms of motor carriers?

Q. Yes.

A. I don't recall that there are any of the reports I got from the field that dealt with that subject at all.

Q. What I meant, the effect of these abuses, do they have an effect on other forms of transportation?

A. I don't recall anything of that type that has been called to my attention.

Q. In connection with the payment for the use of the owner-operator on the basis of a percentage of revenue, have you had any reports from the field that that causes discrimination between shippers? By that I mean that the so-called gypsy refuses to transport the low-rated commodities and demands from the carrier only the high-rated commodities?

A. Well, we have had reports on a number of things that might be called discrimination through the use of the owner-driver of a gypsy, one of which is the gypsy frequently will turn down loads where when he gets a percentage of the revenue the percentage isn't high enough to suit him. Sometimes he will haul it if he is anxious to get back to some other place to get another load. Generally when he is running from a place where there is a lot of [fol. 1370] freight moving out, he will try to handle only the high-rated commodities and generally the carrier will try to make him haul the low-rated commodities and he will haul the high-rated commodities on his own vehicles and it is a matter of out-trading each other.

Q. That would tend to restrict the service provided by the carriers to those shippers of low-rated commodities as compared to the shippers who have high-rated commodities?

A. Yes, it probably would, but not much more than the carrier himself does when he has a limited number of trucks.

Q. However, these carriers that depend principally on owner-operators and have very little equipment of their own would be unable to in any way compel the owner-operator to haul the low-rated commodities, isn't that true?

A. No, not if you are talking about the owner-operator. Where a carrier has a fleet composed entirely or largely of owner-operators working for him regularly, he loads them generally in the same way they would be loaded if he owned his own trucks. He keeps them satisfied in those cases where they are paid on a percentage of revenue by giving them profitable loads in turn. I don't know of any

large carrier whose fleet is composed to any substantial extent of gypsies, that is, who depends on gypsies entirely. By gypsies, I am distinguishing from other owner-operators. Those who are dependent on gypsies entirely or largely, if there are any such, of course would be unable to [fol. 1371] guarantee any kind of service at all.

Q. Wouldn't the same condition prevail as to ability of the carrier to have the owner-operator transport a low-rated commodity, with the conditions the same as described in your direct testimony, where the carrier that you used as an illustration was unable to control the safety provisions? In other words, where there was a shortage of carriers, owner-operators, and they could pick and choose. Would it also be fair to say that they would be in the same position as to compelling them to take low-rated commodities in that case?

A. Oh, yes. In those situations, as exist in a number of cities such as New York and Chicago, where there are meeting places for gypsies to congregate and carriers call up, they must tell what the load is and what amount of money the person is going to get before the carrier will say yes to his suggestion and pick up a load, for instance, for Omaha. They want to know the money first and if it is a low-rated commodity and they are being paid on a percentage basis, they won't take it.

Q. Mr. Todd was questioning you about joint interchange arrangements between contract carriers. Is there any provision in the Interstate Commerce Act to provide for the establishment of through routes at joint rates by contract carriers?

A. There is no provision that requires it in the case of contract carriers as it would in the case of common carriers.

Q. Is there any provision which would authorize it?

[fol. 1372] A. No specific provision, no.

Mr. Diehl: Is there any which would prohibit it?

The Witness: No specific provision, that I know of.

Mr. Burton K. Wheeler: As a matter of fact, under the law, the Commission couldn't grant it, could it?

The Witness: I am not sure of that. The question of interchange as between contract carriers is a matter of

some little heat as between the different carriers themselves and I don't believe that Mr. Todd, representing the contract carriers, is entirely satisfied with my statement of what the law permits.

Mr. Burton K. Wheeler: I mean the language of the law is so broad with reference to rules and regulations that it gives the Interstate Commerce Commission power to do almost anything it wants to do.

Mr. Diehl: Except that they have to be reasonable.

Exam. Lawton: That is one of the Commission's problems, isn't it, Mr. Blanning, is the question of what contract carriers can do? Aren't those problems that are still somewhat unsettled?

The Witness: I think you can call some of them open at present, although the Commission has expressed itself enough to give the Bureau an opinion as to what the Commission intends.

By Mr. Eldred:

Q. In your opinion, do these abuses which you have described here have effect not only on motor carriers, but also on other forms of transportation?

A. Only to the extent that, as far as I think now, there is [fol. 1373] freight being moved by motor carrier under lease that wouldn't be moved by motor carrier, probably, if leasing were prohibited altogether.

Mr. Burton K. Wheeler: Aren't some of the things you are complaining of the cause of stimulation between shippers and causing a breakdown of the rate structure itself?

The Witness: Oh, yes. I thought he meant as affecting the railroads or some other type of transportation.

Mr. Burton K. Wheeler: Well, you break down the rate structure of the trucking industry in itself and it not only affects directly the rate structure of the truckers, but it of necessity does affect other forms of transportation to some extent.

The Witness: Well, some of the practices that exist do seriously affect the rate structure of the motor carriers to the extent that the rate structure of the motor carriers

affects the railroads; of course, those practices cause that effect.

By Mr. Eldred:

Q. Mr. Blanning, the rate structures of the motor carriers and the rate structures of the railroads bear quite a relation to each other. They are very sensitive. Changes in one cause changes in the other.

A. That is right.

Mr. Eldred: That is all, sir.

Exam. Lawton: Is there going to be any necessity for a session this evening?

[fol. 1374] Mr. Burton K. Wheeler: I assume that you are not going to hold a session tomorrow?

Exam. Lawton: Not if it can be avoided. How many witnesses are going to be heard this afternoon?

Mr. Girard: Mr. Examiner, I wonder if this would be the appropriate time to inquire whether or not there is a possibility that there can be a continued hearing, preferably at Chicago, and also preferably within a relatively short time? I might preface my remarks by saying that we in the industry are not all taking the same view. We take the position that it is up to us to present to the Commission these views in as extensive form as we can. I personally would urge a Chicago hearing.

Exam. Lawton: I want to say on that point that there have been requests informally for hearings at a number of points. I suggest that you put your requests in writing addressed to the Commission and indicate the place at which you would like to have the hearing, the number of witnesses that will be heard, the nature of the evidence, and about how long you think the hearing might take and why you were not prepared to put in the evidence at this session. When those requests are in, then consideration can be given to setting hearings at other places. They can't be set at every point.

Mr. Girard: I could have left the word "Chicago" out. It is just natural that I said that. The location is not [fol. 1375] essential to my request.

Exam. Lawton: These hearings will have to be coordi-

nated with other hearings and other activities and arrangements will have to be made in advance.

Mr. Girard: My point, Mr. Examiner, is that if we were to leave here this evening and not have some idea that there will be a continuance, we might very seriously jeopardize ourselves. If there is going to be a continuance, it doesn't seemed to be desirable to stay in Washington over the week-end. We don't want to leave ourselves in the position that we had an opportunity to be heard and we didn't take advantage of it.

Exam. Lawton: Some of the parties have indicated that they have been unable to properly prepare even their cross examination because of their attendance at the convention that just ended. There has been some suggestion that further cross examination of Mr. Blanning other than by parties who intend to leave this afternoon might be deferred until later. I had thought of the 1st of November, but, of course, that is the day before election. I don't know how that would suit you.

Mr. Davis: Mr. Examiner, we certainly want to get into the record the evidence of the abuses of leasing and make recommendations. Most of the oil field haulers are domiciled in and around Texas, Oklahoma, New Mexico and Louisiana. As I understand now, there is a possibility that regional hearings will be held. Is that correct?

[fol. 1376] Exam. Lawton: I can't say that the hearing would be held at a point that would be convenient to your people. I understand you are prepared to go ahead at this time. If you are so prepared, I suggest you put in the record what you have.

Mr. Burchmore: Mr. Examiner, I can see that you must defer, perhaps, a decision as to whether to have regional hearings, but I wonder if we couldn't have an announcement some time today, preferably after lunch, whether or not there will be a further hearing. I have expected to ask at the conclusion of this hearing for a further hearing on behalf of the National Industrial Traffic League and from the numerous requests that we have heard in this room and outside, it is quite apparent that there are a great many others who are not and could not be prepared at

this hearing to meet the testimony on behalf of the Bureau and that which we understand is to come from the A.T.A. Can these people not have the assurance of an announcement that there will be some further hearing and then leave it to your consideration of the requests about where to have the hearings?

Exam. Lawton: I think so.

Mr. Ellis: Mr. Examiner, I would like strongly to support what Mr. Burchmore has said. I advised the presiding examiner before this case was reassigned by letter that I would have a witness here yesterday who had to leave today. We have not been negligent. We have our testimony in written form and our exhibits. We don't care where you [fol. 1377] hold the hearing. We prefer to have regional hearings, of course, in Chicago, but wherever you hold the hearings, we want to come to them, but we can't do it today. We would like to know now if at the conclusion of this session tonight some of us could return to our homes with the assurance that we would be heard at some other time and place.

Exam. Lawton: I think so. Do I understand, Mr. Ellis, that you can't put your witness on today?

Mr. Ellis: No, sir, he is not in the city. He was in the room yesterday but he had a commitment that he had to be absent.

Mr. Diehl: Mr. Examiner, I have some witnesses in the same position. They have had to return to Florida and they will not be able to be heard at this hearing, whether it be today, tonight or tomorrow. We strongly urge, of course, a continuance and we strongly urge regional hearings, including one — Jacksonville or Miami or possibly as a compromise, Miami. Miami in December would be good.

Mr. Burton K. Wheeler: Mr. Examiner, I am sure if you start holding hearings generally over the country every community in the country will want to have hearings. I am sure Butte, Montana and Seattle and Boise, Idaho, and every other city will want them. They will never get through with it. Frankly, it seems to me that if you continued the hearings but did have the hearings here in Washington it would tend to shorten the time and you

would get all of the testimony that was necessary but if [fol. 1378] you hold regional hearings all over the country, you will just get a lot of cumulative testimony from everybody who wants to testify. That has been the experience of some of the committees I have served on. They never end.

Exam. Lawton: The only thought I had is that there might be one other hearing at some other point. I couldn't even promise that until I get these requests and we see what the parties have to offer as to the number of witnesses and things of that kind.

Mr. Earnshaw: Mr. Examiner, let the record show that our company will have a witness at a later hearing also.

Exam. Lawton: Are you prepared to go ahead at this time?

Mr. Earnshaw: No, sir.

Exam. Lawton: How about a continued hearing here on November 1st?

Mr. Eldred: That is the day before election.

Exam. Lawton: Monday and Tuesday of that week are the only days we can get a hearing room.

Mr. Turney: Mr. Examiner, November 1st is not convenient for me if that is going to be the only hearing and you are only going to allow two days for it.

Exam. Lawton: No, I think probably we can have the hearing here on November 1st and if it lasts more than two days we can make arrangements at the auditorium or the Department of Commerce or somewhere.

[fol. 1379] Mr. Turney: If it goes into the month of November, I am in another ex parte proceeding that will also require the auditorium the same day. That is the general investigation of all bus fares. I am afraid one of you will have trouble getting space.

Mr. Burchmore: May I suggest about that, Mr. Examiner, that if you allow a little more time before the adjourned hearing you may satisfy some of the desires for regional hearings. Some of the people who might otherwise want a hearing at home, if you hold your further hearing in December or January, might be able to attend here and cover it all in one hearing.

Mr. Johnson: Mr. Examiner, that would not satisfy the people in the far west and the middle west. We cannot bring our evidence to Washington and put it on.

Mr. Eldred: It wouldn't in the southeast, either.

Mr. Johnson: It might shorten the hearings to have them in Washington, but it would certainly delete some of the records.

Exam. Lawton: Again I suggest you file written requests for further hearing. Will there be any further cross examination of Mr. Blanning this afternoon?

Mr. Eldred: Might I ask just one question here, Mr. Examiner?

By Mr. Eldred:

Q. Mr. Blanning, would you refer to your Exhibit 2 here, item 24? What is the objectionable nature of that particular item, sir?

A. Just the general objection to a carrier having vehicles that it doesn't own driven by drivers that it doesn't hire performing service which the Commission authorizes the [fol. 1380] carrier to perform.

Q. Is it in this case that the railroad held a certificate as a common carrier?

A. That is right.

Mr. Pou: Mr. Examiner, I think I should produce the memorandum of instructions to the field about which Mr. Ellis inquired yesterday.

Exam. Lawton: That will be identified as Exhibit No. 4.

(Respondent's Exhibit No. 4, Witness Blanning, marked for identification.)

Exam. Lawton: If anyone desires a copy of this exhibit and does not receive it at this time, leave your name with Mr. Pou.

Before we recess, will Mr. Blanning be required after the noon recess?

Mr. Lieberman: If Your Honor please, you will recall that we made a request and I still press the position that we have taken and state again that after last night's re-

view of the testimony we are not prepared to pursue the cross examination of Mr. Blanning.

Exam. Lawton: I was trying to fix the date of a further hearing here at Washington.

Mr. Ellis: Mr. Examiner, it may be that you have announced this positively, but some of us over here are not sure because of the confusion and so many people talking [fols. 1381-1390] at once. Regardless of whether or not there are regional hearings, which I understand is a decision to be made later, are we safe in depending on the fact that there will at some time and place be a further hearing in this proceeding?

Exam. Lawton: Yes, and at the earliest possible date and here in Washington, D. C.

Mr. Blanning, you are excused subject to recall for further cross examination.

(Witness temporarily excused.)

Mr. McAuliffe: Mr. Examiner, before you recess, I would like to enter an additional appearance. Kenneth J. McAuliffe, on behalf of Compressed Gas Association.

Exam. Lawton: We will recess until 1:45.

(At 12:25 p.m., a recess was taken until 1:45 p.m. of the same day.)

[fol. 1391] Afternoon session

Mr. Burchmore: Why can't we proceed in the order you first adopted, Mr. Examiner, and then if it appears as the afternoon goes on that there won't be time for these other people, we could very well interrupt and let them go on.

Exam. Lawton: I think the American Trucking Association should proceed.

Mr. O'Brien: May I inquire, Mr. Examiner, if the date of October 25th is definite? In that case we will defer our direct until that time.

Exam. Lawton: Yes, that is the only date I can find that is open.

Mr. O'Brien: We can rely upon that date?

Exam. Lawton: Yes.

Mr. O'Brien: Thank you.
Exam. Lawton: Mr. Idol, call your witness.

JOHN V. LAWRENCE was sworn and testified as follows:

Direct examination.

By Mr. Idol:

Q. What is your name, please?

A. My name is John V. Lawrence. I am Managing Director, or in other words, the Executive Officer, of the American Trucking Associations, Inc., incorporated under the laws of the District of Columbia as a non-stock, non-profit corporation, with headquarters at 1424 16th Street, N.W., in this city.

Q. What is American Trucking Association, Mr. Law-
[fol. 1392] rence? How is it set up?

A. The American Trucking Association is a federation of 52 affiliated associations, one in the District of Columbia and one in each of the 48 states except in California, Illinois, and New York, where we have two. Its affairs are under the jurisdiction of the Board of Directors. They consist of seven members from each state in the nature of state delegates. One must be a common carrier. One must be a contract carrier. One must be a local cartage operator. One must be a private carrier. The other three are to be chosen according to the wishes of the people in the state. This Board of Directors meets annually.

Q. Mr. Lawrence, just a moment. Don't you have additional representation on your board from various conferences?

A. I will get to that, Mr. Idol, as we go along. When I speak of delegates at large or directors at large, I will get to that.

We have this Board of Directors who govern the affairs of the Association and who meet annually. There are these additional directors at large. That is, officers of the corporation who are not elected from the states as directors and become directors at large. This Board of Directors

meets annually but may be called in special session for an emergency occasion when reason is sufficient to require it. In the interim between the annual meetings of this directorate, the affairs of the association are in the hands of an executive committee. Before describing the executive com-
[fol. 1393] mittee, I would like to describe our membership and national structure a little further. We have no direct members. The members of these state organizations are the memberships of the federation, which is the corporation here.

We do, however, have conferences formally known as divisions and which have been constituted by the Board of Directors from time to time and there are ten in number today. They are as follows: The automobile transporters, the film haulers, the oil field haulers, the tank truck carriers, the local cartage operators, the regular common carriers, the irregular route common carriers, the private carriers, the contract carriers and household goods carriers. Those 10 are 10 conferences. They deal with affairs peculiar to the operations in which they are engaged. The executive committee which governs the affairs of the corporation in the interim between directors' meetings, is composed of first, the seven general officers.

There are eight general officers, really. They are the President, chairman of the board, four vice presidents at large, first, second, third and fourth, so designated, the secretary and the treasurer. In addition, each chairman of those conferences is a member of the executive committee; 10 in number. Then there is a vice president elected by each affiliated association who is a member of that executive committee.

Q. Mr. Lawrence, when was the matter of truck leasing
[fol. 1394] first brought formally to the attention of A.T.A. approximately?

A. I believe it was the latter part of September, last year, when we received a letter from Mr. Blanning.

Q. Did A.T.A. take any action on that request?

A. We immediately, according to custom, called a meeting of the staff heads of the different conferences and came to the conclusion that it was a matter on which not everybody was agreed at that time and the matter was referred to the

ten respective conferences for discussion at their meeting in Los Angeles in conjunction with the annual convention at the end of October, 1947.

Q. Was any further action taken at the convention?

A. No specific action was taken at that convention other than what might have been taken by the various conferences, some of whom instituted surveys and others were in disagreement at the time and were going to continue it on their dockets.

Q. Did your executive committee subsequently set up a subcommittee known as the Truck-Leasing Committee?

A. In its meeting of February 3 to 6 in Chicago in this current year the executive committee set up a committee to endeavor to coordinate the views of the country and if possible arrive at some common understanding as to what would be proper and right to suggest to the Commission as an industry view.

Q. Did that committee subsequently make a formal report to the executive committee?

[fol. 1395] A. The committee made three separate reports, two preliminary ones and finally its final one.

Q. And submitted them to the executive committee?

A. Which was submitted to the executive committee which is convening in Washington on Monday and Tuesday of next week.

Q. Was the final report approved by the executive committee?

A. The final report was approved with slight exceptions. The report itself was approved. As to its coverage or applicability, it was noted by the executive committee that the household goods carriers, because of peculiarities of their operation, would make an independent presentation and that the household goods carriers and the contract carriers, while concurring in the report——

Q. Just a moment, Mr. Lawrence. I think you made a mistake there. You said there would be a separate presentation by the Household Goods Carriers Conference. Then you named two other conferences.

A. The Oil Field Carriers Conference and the Contract Carriers Conference, while concurring in the report in general, did not go along with it entirely, as I recall, with

respect to one-way trip leasing and in that regard would make their own trip presentations.

Q. Was the report of the truck leasing committee subsequently presented to the convention of directors?

A. It was.

[fol. 1396] That is, a resolution approving it was submitted and the report itself was presented.

Mr. Idol: We have distributed copies of a document entitled resolution adopted by unanimous vote of the Board of Directors of American Trucking Associations, Inc., October 13, 1948.

Exam. Lawton: That will be identified as Exhibit 5.

(Respondent's Exhibit No. 5, Witness Lawrence, marked for identification.)

By Mr. Idol:

Q. Mr. Lawrence, the effect of this exhibit, isn't it, is to authorize the presentation of the truck leasing committee's report in this hearing as the position of the American Trucking Associations with the exception particularly noted of the Household Goods Carriers Conference and with the further proviso that any dissenting conference or individual might present an independent position?

A. That is correct.

Q. You have official notice of dissenting position only from the Oil Field Haulers Conference and the Tank Truck Conferences. Do you have dissenting notices from other conferences?

A. Not definite, no, except that I have not been notified to the contrary with the further exception that the household goods noted it in the resolution itself.

Mr. Idol: I have nothing further from Mr. Lawrence.

Mr. Pou: I have no questions.

Cross-examination.

[fol. 1397] By Mr. Todd:

Q. There is just one thing I would like to clarify, Mr. Lawrence. With respect to the Contract Carrier Confer-

ence, isn't it true that their position was that they approved the majority report of the committee with the exception that they advocated that A.T.A. take the position that trip leasing should be abolished except between authorized carriers?

A. I believe that is correct. In other words, they took exception. I tried to state it otherwise, which was my knowledge of it. They did take exception to the one-way trip-lease as carried in the report. I didn't want to state your position in advance.

Mr. Todd: Thank you.

Cross-examination.

By Mr. Ellis:

Q. Mr. Lawrence, yesterday in cross examining Mr. Blanning I suggested to him that the rail carriers had some interchange problems and they had been allowed to adopt rules and regulations for themselves that had never been done by the Commission. I asked him what he thought about that as a policy for the motor carrier industry and he replied, as I recall it, "That is what I have been trying to do for eight years."

Now, am I correct in understanding your testimony that the first time he officially called this to the attention of the American Trucking Association was in September, 1947?

A. This present proceeding. I did notice in February of this year in our own publication, "Transport Topics" we [fol. 1398] had a front page story on leasing and in that "ten years ago note", there was some discussion of that at that time which coincides pretty much with Mr. Blanning's stating of the question.

Mr. Burton K. Wheeler: As a matter of fact, Mr. Lawrence, it is a notorious fact, isn't it, that in your trucking industry you have never been able to get them all together to agree upon almost any proposition?

The Witness: I wouldn't say that, Senator. But we had just merely that note on the leasing proposition. There was a newspaper item. This current proceeding—I couldn't

vouch for the exact date—it was called to our attention by letter in September or early October of this year.

By Mr. Ellis:

Q. This has not been repeatedly and consistently called to your attention over a period of eight years and you did nothing about it, has it, Mr. Lawrence?

A. I never have recalled any official communication on the matter.

Mr. Ellis: Thank you.

Mr. Burton K. Wheeler: Well, the fact is, isn't it, Mr. Lawrence, that the Interstate Commerce Commission, and particularly the trucking division, has talked to the various groups with a view to trying to get them together to agree upon various problems but it has been a very difficult thing because of the fact that many times their interests are diverse?

Mr. Idol: Is the Senator testifying, Mr. Examiner?

Mr. Burton K. Wheeler: No, I am asking a question.

[fol. 1399] The Witness: I think things move slowly in an industry of this magnitude, slower than they would with twenty members.

Mr. Burton K. Wheeler: And the reason you got this resolution passed as unanimously as you did is because of the fact that you first exempted household goods and then you put in a provision that any other dissenting conference or interested party may present their own viewpoint which would indicate that you left it wide open so that anybody in the industry could come in and do as he pleased and that they were not bound by the resolution.

The Witness: I think the Senator will agree we are still a democratic country and we try to operate that way. We do not bind. It is a voluntary organization and we cannot bind people to agreements.

Mr. Burton K. Wheeler: You have never been able to.

Mr. McAuliffe: Mr. Examiner, may we proceed with the examination?

Exam. Lawton: Are you going to identify these other exhibits, Mr. Idol?

Mr. Idol: Not through Mr. Lawrence.

Exam. Lawton: Is there any further cross examination?

Cross-examination.

By Mr. Eldred:

Q. Just one question, Mr. Lawrence. Have the reports of the leasing committee been approved by the state associations in any way, whom I understood you to say were [fol. 1400] members of the American Trucking Associations?

A. The report of the leasing committee is approved or was approved and its resolution adopted by the Board meeting here on Wednesday of this week. The state associations determine the views of their memberships in their own way but the actual exercise of the right to vote is not exercised in American Trucking Associations by the individual except through his seven delegates and this was adopted by a majority of the delegates from all of the state associations in the Hotel Statler on Wednesday afternoon. That is the approval of the state associations.

Q. But that doesn't necessarily mean that that is the views of the state associations because it has never been referred to the state associations as such but to the delegates who come to the A.T.A., is that correct?

A. These reports are sent to the state associations.

Q. We will put it this way: Have you received approval of the leasing report from any state association which has had an annual convention where the members of the association have had an opportunity to vote and express their opinions?

Mr. Idol: Mr. Examiner, we will stipulate that the report has not been submitted formally to any state association.

Mr. Eldred: That is all.

Exam. Lawton: Is there anything else?

Mr. Byerly: I represent the National Council of Private [fol. 1401] Motor Truck Owners.

Cross-examination.

By Mr. Byerly:

Q. Do I understand that this report from your truck leasing committee has been subscribed to by your Private Carrier Conference in toto or in part?

A. I say that Mr. Idol asked me if I had definite assurance. I said I had only had notification from three different conferences of differing with it up to this time. I wouldn't speak for them at this moment.

Mr. Byerly: That is all.

Exam. Lawton: If there is nothing further, you are excused.

(Witness excused.)

Mr. Idol: Interrupting for just a moment, Mr. Examiner, I would like to ask if there are counsel for the other conferences here other than Household Goods, Contract Carriers and Oil Field Haulers who can state their own conference action on the report?

Mr. Floyd: We have the Local Cartage Conference. It approved the report of the truck leasing committee.

Mr. McBride: Do you want just a statement on that, Mr. Examiner? I am R. J. McBride, General Manager of the Regular Common Carrier Conference of the American Trucking Association. At a membership meeting held in the Statler Hotel on October 9th the Regular Common Carrier Conference adopted unanimously the final report of the truck leasing committee.

[fol. 1402] Exam. Lawton: We will accept that as a stipulation.

Mr. Dixon: George Dixon. Mr. Examiner, my appearance is on behalf of the National Automobile Transporters Association which is practically the same as the Automobile Conference for whom I have not entered an appearance, but I can state of record that the automobile haulers fully approve the report of the A.T.A. and have voted unanimously in support of it.

Mr. Zuby: Mr. Examiner, I represent the Independent Movers and Warehousemen's Association, a group of household carriers operating interstate and numbering upwards

of 400. We propose to present our own point of view at the adjourned hearing.

Exam. Lawton: We understand that.

Mr. Idol: I will get the rest of them in the record later, Mr. Examiner. I call Mr. Kiley.

EDWARD V. KILEY was sworn and testified as follows:

Direct examination.

By Mr. Idol:

Q. You are employed by the American Trucking Association, Mr. Kiley, full-time?

A. Yes, sir.

Q. In the Research Department?

A. That is right.

Q. Your duties have to do with the preparation of statistics concerning motor carrier operations?

A. That is right, yes, sir.

[fol. 1403] Mr. Idol: I ask that papers distributed, the first headed "Operating Statistics", compiled from the annual reports of the Interstate Commerce Commission, of 867 common carriers of general freight be identified as Exhibit No. 6.

Exam. Lawton: It will be marked Exhibit No. 6 for identification.

(Respondent's Exhibit No. 6, Witness Kiley, marked for identification.)

Mr. Idol: And document headed "Condensed Balance Sheet and Equipment Summary" be identified as Exhibit No. 7.

Exam. Lawton: It will be so identified.

(Respondent's Exhibit No. 7, Witness Kiley, marked for identification.)

By Mr. Idol:

Q. Mr. Kiley, did you personally prepare these reports?

A. You mean this report here?

Q. Yes.
A. Yes, sir.

Mr. Eldred: Which one are you referring to?
Mr. Idol: I am speaking of both of them.
The Witness: We prepared both of these exhibits, that is right.

By Mr. Idol:

Q. On the top of the page of Exhibit No. 6, the statement is made that it is compiled from the reports of 867 common carriers of general freight. Why is the number limited [fol. 1404] to that.

A. The number is limited only because those were the complete reports at the time this was prepared. Those carriers' reports were complete and were on file with the Commission and therefore they could be compiled and the resulting totals would therefore be comparable and complete.

Q. They represented all of the reports of Class I common carriers of general freight available?

A. That is right, yes.

Q. They were prepared recently?

A. They were, yes, sir.

Q. About when?

A. They were finished about three weeks ago.

Q. At the bottom of Exhibit No. 6, Mr. Kiley, a statement is made that if the carriers had to purchase the equipment operated under leasing arrangements it would mean an expenditure of over $34 million. I wish you would tell us how you arrived at that figure.

A. Well, the carriers on their reports show the equipment they own of all types, whether they operate it inter-city operation or local operation, but the equipment they own, trucks, truck tractors, semi-trailers and trailers. The carriers also report the equipment in service, in inter-city service, that is, in a year. They show in the annual reports the number of trucks or vehicles which are power units which they have in their inter-city operation at the close [fol. 1405] of the year. They break down that figure by that part of the total of the trucks they own, trucks they

lease, and trucks which they carry under purchase transportation. The total of those three is the total number of trucks that they operate in inter-city service.

Q. Purchase transportation, you referred to. Does that represent the vehicles which are owned by the carriers?

A. No, as we understand it, the difference between the leasing arrangement and the purchase transportation is an accounting distinction on the carrier's books.

Q. What are purchase transportation vehicles under Commission requirements?

A. Under the present requirements the Commission includes under purchase transportation where the compensation is on a division of revenue. Also there is an interpretation that the division according to the control of the vehicle, whether it passes to the lessor or lessee, determines it. The lease of those vehicles which the carrier does not compensate for on a division of revenue is on a mileage basis or some other arrangement.

Q. But in any event it is leased equipment?

A. The Commission has given us to believe that as far as leasing is concerned generally they are both leased and when the Commission itself makes the break down——

Q. That is as far as we want to go. Now, going ahead, we didn't quite get to the $34 million figure yet.

[fol. 1406] A. These carriers in 1947 operated 37,835 vehicles in inter-city service.

Q. Where do you find that figure?

A. That is on No. 6, Exhibit No. 6. Notice that they operated 37,835 vehicles in inter-city service. Of course, 11,473 were under leasing arrangements, carried as leased or as purchase transportation. That means that if those carriers—those are the ones they operated. For the carriers' owned equipment, the truck-tractor, which is the type that is used predominantly in inter-city service on the carriers' books, cost an average of a little over $3,000 a unit $3,012. That figure is at the bottom of No. 7. Therefore, if the carrier had to buy the equipment he had under leasing arrangements in inter-city service of 11,000 vehicles and had to pay on the average of what he had to pay for that equipment that he owns, it would mean an expenditure of approx-

imately $34 million. He would have to buy 11,000 at about $3,000 a unit.

Q. That would be for the tractors alone?

A. That would be for the tractors alone.

Q. If they had to buy trailers, there would be an additional expenditure involved?

A. Yes, sir.

Q. Referring to the condensed balance sheet summary, Exhibit No. 7, does this statement reflect figures from the same common carriers of general freight included in the operating statistics?

[fol. 1407] A. Yes, sir.

Q. And it again represents all of the reports of Class I common carriers of this type available?

A. Yes, sir.

Q. You have a figure on there of net working capital, $3,639,832. How is that arrived at?

A. Well, in the upper part of that exhibit you will notice under total current assets these carriers show $95,038,419. Under the liability side of the balance sheet or that portion of the balance sheet, they have total current liability of $91,398,587. The difference between current liabilities and current assets is the net working capital and the difference in this case is $3,639,832.

Q. Mr. Kiley, referring to the second page of Exhibit 6, you show data there indicated as the percentage relationship of leased equipment to the total number of vehicles in inter-city operation. What carriers does that cover?

A. That covers all inter-city carriers of property.

Q. Small and large?

A. Well, all Class I inter-city carriers of property, yes, sir.

Q. The exhibits are compiled from reports to the Interstate Commerce Commission?

A. Of Class I carriers.

Q. And you have maintained these figures for some time?

A. This particular part of it, yes, sir.

[fol. 1408] Q. Going back again to the first page and to exhibit No. 7, you show there reports only for common carriers of general freight, Class I. Is there any reason

why the exhibit was confined to a statement of this type of carrier?

A. In keeping our statistics on Class I carriers from year to year, we confine the totals to one specific group of carriers, carriers engaged in the same type of operation. That makes the years comparable for cost trends and other trends in the carriers' operating statistics from year to year. For that reason we confine that each year to just the common carriers of general freight.

Q. You have run regularly cost studies on this classification of carriers?

A. That is right.

Q. Have you run cost studies on any other classification of carriers similar to these?

A. No, sir.

Mr. Idol: That is all on direct.

Exam. Lawton: Cross examination?

Cross-examination.

By Mr. Todd:

Q. Mr. Kiley, I don't believe I got your distinction between purchase transportation and lease operation, if there is any.

A. Well, I am really not authorized to give you that. I am not clear in my own mind as to the distinct difference [fol. 1409] except that actually it is an accounting classification that the Commission makes and has the carriers reporting their expenses between leased vehicles and purchase transportation vehicles. The carriers, for instance, have two expense accounts covering the operation of vehicles they don't own. One is known as operation rent and the other is known as purchase transportation expense and they keep these two separate accounts. As to the reason behind that, I wouldn't be qualified to say why they do that.

Q. Directing your attention to your Exhibit No. 6, in compiling this information, did you make any distinction between leased vehicles that are used on a trip-lease basis from the so-called itinerant or gypsy trucker from vehicles that are on a permanent lease arrangement with an authorized carrier?

A. No.

Q. So that in these figures there may be both present, is that correct?

A. That is right.

Mr. Todd: That is all I have, thank you.

Cross-examination.

By Mr. Eldred:

Q. Mr. Kiley, what was the import of the statement that if the carriers purchased the equipment that they leased it would involve an expenditure of $34 million? Is there any inference that the carriers shouldn't purchase the equipment?

A. No.

Mr. Idol: I object, Mr. Examiner. We are going far [fol. 1410] beyond direct testimony here. We have merely put in statistical figures of this witness.

Exam. Lawton: He has already answered, Mr. Idol. There was no such inference intended.

By Mr. Eldred:

Q. Isn't there available the information, Mr. Kiley, in the Commission's records, on more than 867 carriers, for the year 1947 and you merely took out these 867?

A. I thought I had answered that. I believe I said that there is information available for all Class I carriers and they file reports. Those reports are not all complete. When they are not complete naturally you can't compile them for an aggregate. These were complete reports and therefore the totals have meaning.

Q. Aren't these the same carriers that more or less report to you their information on loadings, etc?

A. No, they are not the same identical carriers.

Q. But you only found 867 reports that were complete for the year 1947?

A. Yes, that is right.

Q. Thank you.

A. 867 common carriers of general freight.

Q. I see. These were inter-city carriers, and not local?

A. That is right.

Q. Did you attempt to make any analysis of the contract carriers?

A. No.

[fol. 1411] Cross-examination.

By Mr. Lordan:

Q. Mr. Kiley, in your examination did you discover how many Class I carriers of general freight there are or were in the year 1947?

A. How many there were in 1947?

Q. Yes.

A. No, not in that year.

Q. You took the statistics from the Commission's records for 867 carriers. What I am trying to discover is what percentage or ratio of the total number of carriers in that class are covered by your compilation?

A. I wouldn't know.

Q. Were these the carriers that are members of your association, Class I, general freight common carriers?

A. I don't follow that question. What do you mean?

Q. You are economist or research statistician for the American Trucking Association, is that correct?

A. That is correct.

Q. Are these statistics of your members, of the members of the American Trucking Association?

Exam. Lawton: The 867 carriers.

The Witness: These are motor carriers.

By Mr. Lordan:

Q. Motor carriers are members of your association, are they not, or of the component parts of your association? [fol. 1412] A. I believe Mr. Lawrence's testimony pointed out that the membership of the American Trucking Association is the affiliated state associations.

Q. Would or would not these carriers belong to the state affiliates? Do you know?

A. You mean to what extent they belong to them? I do not know that.

Q. And you do not know what percentage of the carriers in the particular class attempted to be portrayed by Exhibit 6 are represented by the 867 carriers either, do you?

A. No.

Q. You don't know whether it is 10 per cent or 20 per cent or 50 per cent, or whatever it may be?

A. You mean what per cent these 867 carriers are of all Class I common carriers of freight?

Q. Of general freight.

A. I could only hazard a guess as to that.

Q. You made no study?

A. No study of that.

Q. When did you make this calculation?

A. This calculation was made about two weeks ago.

Q. For the calendar year 1947?

A. That is right.

Q. When is the common carrier of general freight Class I required to have his annual report into the Commission's hands?

[fol. 1413] A. I believe—and this is only a guess on my part, as my memory serves me—that it is due in on the 30th of March, but I am not sure on that.

Q. But two weeks ago this was all of the carriers that you could find who had completed that requirement completely?

A. No, that is not a correct statement. We start getting these records from the Commission as they come in. But the carriers don't all send their reports in on the same day. They come in over a period of time. As they come in abstracts are made of the reports and each various time when the abstracts are started to be made the total increases. It goes on and on.

Now, of course, if you would go back and backtrack you would pick up more. That hasn't been done up to this time three weeks ago when we had complete reports for this many. That doesn't mean that now that is all there are in the Commission's files. There are more and we will pick those up.

Q. Do I understand that 867 carriers are all that there were on the last abstract that the Commission had forwarded to you at the time you completed this calculation?

A. The Commission doesn't forward it to us. We get it

from the Commission's records and at the time that was all the complete reports there were.

Q. When you were discussing leased vehicles, and purchase transportation vehicles—and on Exhibit 6 you have in the first class 4352 units operated or 11.5 per cent of the [fol. 1414] total—to what were you referring, Mr. Kiley?

A. In their annual report to the Commission, the Class I carriers report in a schedule—I can't give you the number of this schedule now but it is in the report—the breakdown you see on this exhibit. They show in their schedules the number of units operated in inter-city service, owned, leased, purchased transportation, and they give the total just as it is shown here.

Q. Would you surmise, Mr. Kiley, that that breakdown or differential on the annual report is a requirement of the Commission because of the promulgation of a uniform system of accounting?

A. I wouldn't know what the reason is, but I would assume that is probably it.

Q. Would you assume that that breakdown was made as a result of a requirement of the Commission?

A. Well, naturally.

Q. Do you know what the requirements of the Commission are which classify those particular figures in the various groups that they are set forth here?

A. I am not familiar with the details of how the Commission prescribes for the breaking down and the Commission itself makes daily decisions for individual carriers on how they should classify certain expenses and whether they should show certain vehicles as being a leased vehicle or [fol. 1415] purchase transportation vehicle.

Q. Whether or not a particular vehicle should be classified as a leased vehicle or as a purchase transportation vehicle depends upon the provisions of the classification of accounts which prescribe that bookkeeping on that basis, does it not?

A. That is right.

Q. Have you examined the provisions of those requirements to determine how they should be classified?

A. I have seen them and studied them but I don't have any memory on that.

Q. Could you answer me as to whether or not a vehicle leased under some circumstances would be in one group or another group?

A. No, I couldn't give you the circumstances.

Mr. Lodan: That is all.

Exam. Lawton: Does anyone else have any questions? If not, you are excused.

(Witness excused.)

Mr. Idol: I call Mr. Sutherland.

D. L. SUTHERLAND was sworn and testified as follows:

Direct examination.

By Mr. Idol:

Q. State your name and address, please, sir.

A. My name is D. L. Sutherland, New Britain, Connecticut.

Q. Your business connection, Mr. Sutherland?

[fol. 1416] A. President of the Middle Atlantic Transportation Company, Inc.

Q. Are you the D. L. Sutherland identified in the resolution adopted by the Board of Directors of the American Trucking Associations as chairman of the truck leasing committee?

A. I am.

Q. When was your committee appointed, Mr. Sutherland, approximately?

A. The first week in February, 1948.

Q. That was in response to a request addressed to the association by Mr. Blanning concerning the leasing problems?

A. Well, I rather think that was just after the proposed order of the Commission setting down these proceedings came out. It was subsequent to the receipt of the letter but also subsequent to the setting of the proceedings for hearing.

Q. What was the first action of your committee? First,

Mr. Sutherland, what were the instructions to your committee from the executive committee?

A. We were instructed to go into and study the entire subject of leasing practices within the industry, to ascertain whether or not it was possible to come out with a set of principles and suggested rules which the industry might be able to endorse in these proceedings or if necessary to recommend changes in the law if they were needed in order to correct any practices that we thought should be corrected and the industry felt should be corrected. In fact, as Mr. [fol. 1417] Blanning said yesterday, we were told to go out and put up a trial balloon and see what we could come back with.

Q. The Commission at that time had set a hearing for last spring, had it not?

A. That is right. There was a hearing set, as I recall it, for early in April or the middle of April.

Q. Did your committee take any action with reference to the date of hearing?

A. Yes, sir, we were authorized the first week in February. We met, I believe, the last part of the second week or the first part of the third week in February. After a couple of days of exploring the situation among ourselves, we decided that we had a good chance of coming out with something constructive. We had an informal conference with the commissioners of one of the divisions. We told them that we thought it was worth while in the interest of trying to get something concrete to postpone it and if they could see fit to do so we would try to bring back a report in the fall. We asked for a six months suspension or postponement, which they granted subsequently.

Q. What was your committee's next step?

A. The next step was to try to agree among ourselves upon a set of principles and put it up into questionnaire form, sending it out to the industry for the purpose of soliciting comment, for the purpose of stimulating thinking on the whole subject of leasing and gathering together [fol. 1418] as much information as we could as quickly as possible.

Mr. Idol: I would like to have the small booklet which has been distributed identified.

Exam. Lawton: That will be marked for identification as Exhibit No. 8.

(Respondent's Exhibit No. 8, Witness Sutherland, marked for identification.)

By Mr. Idol:

Q. Is this the initial questionnaire to which you refer, Mr. Sutherland?

A. It is.

Q. Was it given wide distribution?

A. Yes, sir, it was given the widest distribution of anything, I think, that our association has ever had anything to do with. We prepared 15,000 copies of this questionnaire and sent them to all known motor carriers through state associations, through our individual conferences, through every contact that we had. We gave it very wide distribution.

Q. The purpose, I believe you have said, was to stimulate discussion?

A. That is right.

Q. In any of your earlier meetings, had you arrived at any substantial agreement with the members of your committee as to what ought to be done?

A. No, at this time we hadn't arrived at any agreement except that we wanted to find out whether or not the in-[fol. 1419] dustry agreed with the principles which we enunciated in this questionnaire. The method of approach was to segregate, as the questionnaire shows, various types of leasing such as, for instance, a lease of a vehicle by a shipper to a shipper, which happened to be number one. We went through ten different possibilities or types of leasing and we expressed, not in entire unanimous agreement on our part, some principles at the start of each one of those sheets regarding that type of leasing and asked the industry to comment to us as to what they thought of the principles which we had enunciated and to also discuss it from the standpoint of with-driver or without-driver and a long-term lease versus a short-term lease.

Q. Would you call those trial balloons, Mr. Sutherland?

A. This was one hundred per cent a trial balloon, yes, sir.

Q. Did you receive any replies to the questionnaire?

A. Yes, we received replies from many individuals, from state associations, from some of the conferences, from various groups that got together in answer to these things. The replies, of course, ranged from 100 per cent no to one hundred per cent yes on every question you could possibly think of and the suggestions were manifold. Approximately between four and five thousand carriers responded to this questionnaire.

Q. What was your next step in the development of this?

A. We had all the information which came in tabulated [fol. 1420] by the staff up at the A.T.A. and we sat down and discussed it. We went into executive session and held a few conferences with Mr. Blanning regarding the types of abuses that he has described here in his exhibits and any comments that he wanted to give us. We began to put into shape what we thought might be something on which we could get further information in more concrete form than this original trial balloon.

In June we went out to Chicago after giving notice to the country that we were going to hold a hearing in Chicago. We went out to Chicago and heard everyone who wanted to come in at that time and give us his viewpoint. At that time we had arrived only at a tentative outline of what we thought might be something of the final situation, but as each person appeared before us at that hearing we did ask them certain agreed-upon specified questions so that we could develop a pattern.

We heard from small individual carriers, from state associations there, from large carrier organizations, state officials, owner-operators, from practically every type of carrier that is known in Chicago and as I say, we followed a consistent pattern in the questions that we asked them, aside from the fact that we took anything that they wanted to give us in addition to those questions.

Q. Just a moment, Mr. Sutherland. We failed to cover the make-up of your committee. How many members does it have?

A. Do you want me to give you the names of them and who they were?

[fol. 1421] Q. I think it would be desirable, yes, sir.

A. Myself as chairman. Mr. C. J. Williams, a contract

carrier from Milwaukee, Wisconsin; Mr. C. J. Roush, a regular route common carrier from Akron, Ohio; Mr. A. F. Schertzberg, a household goods carrier from Chicago, Illinois; Mr. Joseph M. Adelizzi, representing local cartage operators from New York City; Charles P. Clark, a truck leasing company and also contract carrier from St. Louis, Missouri; J. B. Cole from Birmingham, Alabama, an irregular route common carrier; Mr. R. C. Williams of Russell, Kansas, an oil field trucker; Mr. J. M. Akers of Gastonia, North Carolina, an irregular route common carrier; Mr. Ray Lilquist of Salt Lake City, Utah, a regular route common carrier; Mr. Fred Hufnagel of Philadelphia, Pennsylvania, a private carrier; Mr. Bernard J. McHugh of New York City, a private carrier; Mr. George S. Dixon of Detroit, Michigan, representing the automobile haulers; Mr. John Vickers of Charlotte, North Carolina, a film carrier; Mr. W. Stanley Seitz of Detroit, Michigan, a common carrier. That was the committee.

Q. Did you have all the conferences of A.T.A. represented there, Mr. Sutherland?

A. Substantially, yes.

Q. Now, we are down to the point where you had your meeting in Chicago. That is where I interrupted you.

[fol. 1422] A. After we had taken all the appearances that came to the Chicago meeting, we went into executive session and came out with what we called our Report No. 2.

Mr. Idol: At this point, Mr. Examiner, I would like to have identified a paper which has been distributed and is headed Report No. 2 of A.T.A. truck leasing committee.

Exam. Lawton: That will be identified as Exhibit No. 9.

(Respondent's Exhibit No. 9, Witness Sutherland, marked for identification.)

Mr. Bryan: Mr. Chairman, do I understand that these various things that have been referred to here are included in the sheaf that is being sent out to those who have not been supplied?

Mr. Idol: Yes, sir.

By Mr. Idol:

Q. Does Exhibit 9 constitute the position of your committee at the end of its June meeting, Mr. Sutherland?

A. Yes, I think that is true, although I emphasize that the second paragraph of that report says "It is emphasized that this report does not reflect any action taken by the committee as such but is merely a summation of what the committee believes to be the thoughts of the industry." This went out again with the same wide distribution that had been given to the previous questionnaire. We solicited comments from anyone who wanted to make comment on it. We further set down for hearing and notified all carriers anywhere who wanted to appear before the leasing committee that we would hold a series of 13 regional meetings [fol. 1423] which were scheduled for August and early September and were held in Boston, Massachusetts; Harrisburg, Pennsylvania; New York City; Atlanta, Georgia; Nashville, Tennessee; Dallas, Texas; Minneapolis, Minnesota; Portland, Oregon; Detroit, Michigan; Chicago, Illinois; Kansas City, Missouri; Denver, Colorado; and San Francisco, California. We broke our committee up into small groups. I don't think that at any meeting there were less than two committee members present and usually three or four. The carriers were asked to come into those hearings either directly or through their state associations or in any group or any manner that they wanted to and to comment on this Report No. 2. That series of hearings was held, in other words, supposedly to be confined to the subject matter that was in the Report No. 2.

I know that from the minutes of those that I didn't attend and even one that I did attend sometimes we got off the subject a bit, but that was the purpose of them and it was a refinement of No. 2 Report; after these hearings had been held the Committee went back into executive session again and came out with its final report which was adopted this week by the convention.

Mr. Idol: At this point I would like to have identified the final report of the A.T.A. truck leasing committee.

Exam. Lawton: It will be identified as Exhibit No. 10.

(Respondent's Exhibit No. 10, Witness Sutherland, marked for identification.)

[fol. 1424] The Witness: In the second column of that final report, paragraph 3 under principle No. 1, the printer has used the word "position" when it should have been "possession." It is in paragraph number 3 under the first of the principles. The paragraph starts "The fundamental right of any person to lease or otherwise dispose of any chattel in his possession" instead of "position".

By Mr. Idol:

Q. Mr. Sutherland, was your committee in full accord and unanimous agreement with this final report?

A. No, I doubt very seriously if this report one hundred per cent satisfies the thinking of any one individual, let alone all of the individuals on that committee. It does not represent compromise, exactly, either. It represents a unanimous opinion of those present at the last executive session that this was the most practical method that we could arrive at at the present time on anything dealing with the subject of leasing and we firmly believe that it is constructive and will, to a very large extent, answer any proper questions of abusive practice which the Commission has suggested to us up to that time.

Q. Speaking for yourself only rather than your committee, do the principles and proposed rules represent your own ideas of what ought to be done?

A. No, not one hundred per cent.

Q. Then you are in agreement with the proposal?

A. I am in agreement with this report and I am reporting for an industry committee and not as an individual.

[fol. 1425] Q. Since you are not personally in agreement with it, Mr. Sutherland, how do you arrive at your recommendation that it should be adopted?

A. I arrive at that recommendation because it is by far the majority concensus of the information on the subject which came sifting through the committee. I have one reservation and I might as well make that clear before I go along. I think that it has been impossible for us to in this committee give weight enough to the carriers who did not respond in any way or make their wishes known. I

refer to that very large group of one and two truck operators who never engage in any leasing practices. Some of them have more than one or two trucks, but have no interest in the subject of leasing. They did not drop their other business duties to come into any of our meetings or reply to any of our questionnaires and tell us that they didn't have any interest in the leasing question. It is rather difficult to analyze correctly what their feelings might have been. My own personal feeling is that most of them would have said, "Let's stop all leasing." That is the reservation that I have and it is the only reservation I have. I would recommend the adoption of this report as I did to our executive committee and the convention on the basis of all of the information that did come to the hands of the committee, and believe me, it was really extensive.

Q. In your committee's final session, its discussion of the [fol. 1426] principles and rules reflected here, did you treat the subject as a whole and then write up the matter or did you cover the various items one by one?

A. I don't know that I quite understand that.

Q. I mean to say, did you go into the whole problem of leasing in your final session of the committee and then appoint someone to sit down and write it, or did you go over these principles and proposed rules one at a time with your full committee?

A. We went over each principle and each proposed rule one by one over and over and over until we had revised it into final shape.

Q. Then you have heard Mr. Lawrence describe the procedure following when you submitted the report to the executive committee and thence to the convention?

A. That is right.

Mr. Idol: I would now like to have identified, Mr. Examiner, two final exhibits. The first is designated as Rules Suggested for Promulgation in Lieu of Those Proposed By the Order in Ex Parte MC-43.

Exam. Lawton: That will be Exhibit No. 11.

(Respondent's Exhibit No. 11, Witness Sutherland, marked for identification.)

Mr. Idol: The other is an exhibit headed "Comparison of Rules Suggested by American Trucking Associations with Rules Proposed by the Order."

[fol. 1427] Exam. Lawton: That will be identified as Exhibit No. 12.

(Respondent's Exhibit No. 12, Witness Sutherland, marked for identification.)

By Mr. Idol:

Q. Mr. Sutherland, have you reviewed Exhibit No. 11 previous to this hearing?

A. Yes, sir.

Q. It is in different form, is it not, from the wording of the suggested rules set up in your committee's final report?

A. Oh, yes, in the final report we did not make any attempt to be really specific in drawing a rule and you will notice that in that final report we had suggestions for rules. Those suggestions for rules were adopted. The actual drafting of the rules to meet the suggestion accounts for the difference in the wordage between Exhibit 11 and the suggested rules in Exhibit 10.

Q. Is there any difference in substance?

A. There is no difference in substance. They accomplish the purpose of the suggestions.

Q. Referring to Exhibit No. 12, Mr. Sutherland, you have a statement there that under Rule 2 there are substantial differences between Rule 2 as proposed by the order and our suggested Rule 2 which are first, the proposed rule would require drivers to be employees of the authorized carrier whereas our suggested rule would permit the continued use of independent contractors. In your committee's discussion of the rules proposed by the order, did it [fol. 1428] occur to you or your committee members that it was proposed by the Commission to eliminate independent owner-operator performance by use of the word "employee"?

A. We spent a lot of time, of course, in discussing that very important subject and trying to arrive at the correct understanding of just what we were about and to make a

recommendation thereon. We were thoroughly familiar with all of the various practices that are in use all over the country. It seemed to us that the responsibility of the carrier or put on the carrier by the Commission is one which requires that that carrier, for instance, have a physical examination certificate in its files before permitting anyone to drive a truck or, as they are presently written, get it within ten days after he is permitted to drive a truck. It lays on the carrier the responsibility not to require nor permit any driver in his employ to work in excess of the hours prescribed. It makes other similar recommendations. Those two will suffice for illustrations of how we arrived at our decision. Those are the only requirements and they are requirements which go to the carrier and not to the driver. If a carrier can and does conduct its business so that it is in full accord with its obligations under those requirements, it seems to us that there is no importance as to whether he calls the driver an agent or an employee or what other terminology is given to him.

Also he could be called an independent contractor, owner-[fol. 1429] operator, or anything else. We do not agree with Commission's position that the violations on the part of these so-called owner-operators, or itinerant truck men, as we called them in our discussion, are not now illegal. We think they are illegal at the present time and that any carrier who allows any operator to drive for him regardless of what he calls him without living up to the safety regulations is subject to prosecution at this moment by the Commission without any further rules necessary.

Q. Did your committee give any consideration to possible harmful effects of requiring the driver of such equipment to be put on his own payroll and classified as an employee?

A. I don't know that I can answer that correctly as to harmful effects. I will say that we were influenced some in our decision, and very largely because of the reason that I just gave, but we were also influenced because there are court decisions, principally dealing with tax cases, on up to the Supreme Court of the United States, in the case of the Mutual Trucking Case, which recognize that

the independent contractor relationship for tax purposes, withholding taxes and otherwise, does exist in the trucking industry.

Q. Mr. Sutherland, the second point in Exhibit No. 12 under Rule 2 covers the difference between your suggested rules and the proposed rules on sub-leasing. That indicates that your suggested rules would permit sub-leasing and that the Commission's proposed rules would prohibit sub-
[fol. 1430] leasing. Did you recognize any dangers of economic disturbance in the use of equipment under long-term leases by those carriers?

A. Yes, we have attempted in several cases here to point out quite definitely that there is considerable difference between a long-term and a short-term lease and that the Commission has neglected in their proposed rules to give any credence to that fact in that they propose to treat them all alike. We feel that the method of acquiring a piece of equipment is secondary. It is certainly one of managerial discretion. Equipment, whether it is purchased outright for cash or whether it is purchased under a sales contract, whether title actually rests in the mortgagee, whether it is leased or rented under an equipment trust agreement or any other type of lease is unimportant. It is the usage of the equipment by the carrier and not his method of acquiring it that we are dealing with in regulation of transportation.

The things that the Commission has reached out to try to to[illegible] it seems to us, in this particular proceeding, have d[illegible] with effect rather than cause and we have tried in our thinking to reverse that. We are dealing with the method by which the carrier uses the equipment in the instant case and not by the method in which he acquired it.

Answering your question more specifically, if a carrier has a right to lease a piece of equipment which it owns because it purchased it for cash, then it must follow that he h[illegible] a right to use any other piece of equipment in his service [fol. 1431] in exactly the same manner that he can use that piece of equipment in his service. It doesn't make any difference whether he acquired it through one of a dozen different methods. If he has a right to sub-lease one piece of equipment in his service, then he should not be prohibited

by law or rule from sub-leasing any other piece of equipment in his service.

Q. Under our third paragraph in Exhibit 12, Rule 2, we point out the difference under policing rules in the Commission's proposed paragraph 2 B, which, as Mr. Blanning indicated this morning, would effectively prohibit trip-leasing except between terminal points.

This, I understand, is one point on which two of the conferences differ. The A.T.A. does not propose any such restriction in its suggested rules, is that correct, Mr. Sutherland?

A. That is correct.

Q. Did the committee consider the subject of trip leasing?

A. Yes, indeed, the committee really considered the subject of trip leasing. Arriving at our decision and the reason therefor, again by way of comment, it seems to us that what the Commission was attempting to do, if they found that trip leasing should be continued—and we believe that it should be since it is an economic necessity at this time—was to solve the problem of effectively determining when there was a lease in existence and when there wasn't a lease in existence. A provision such as the Commission [fol. 1432] had in its proposed rules that the lease should be entered into at a time certain and be terminated by certain action at a time certain or by a time and date doesn't quite square with the actual practices of the industry and we think can be modified so as to retain all its worthwhile components and still not put a *straight jacket* around economically sound practices within the industry. We think that the trip-lease can be terminated quite effectively and so that it is subject to policing at a point where a terminal is not maintained just as well as it can be at the terminal; we, therefore, in our suggested rules handle this particular subject by insisting that where a lease is terminated at a point other than a terminal the lease itself contain a condition certain upon which that lease does terminate, not a time certain, but a condition certain, and that that be in the terms of the lease at the time the lease is drawn.

Mr. Burton K. Wheeler: How could you police that, as a practical matter?

Mr. Lieberman: If Your Honor please, I object to any interruption of this witness. I don't think we will get the story straight if there are interruptions.

Mr. Idol: I will object myself, Mr. Lieberman.

Exam. Lawton: Objection sustained.

By Mr. Idol:

Q. Our fourth point on which we have touched already is that the Commission's proposed rules make no distinction [fol. 1433] between the policing of a permanent type lease in which vehicles under more or less long-term usage are identified and used in the same manner as a carrier's owned equipment and on the other hand short-term trip or perhaps round-trip leases.

Will you give us a little more of your committee's thinking on that point?

A. Yes, the position of the committee was that when a piece of equipment is acquired by any method, whether it be a lease or any other method where it is taken into the fleet of the carrier, permanently identified as being a part of that fleet, so that it is indistinguishable to anyone on the street or to a police officer, we see no reason why it should have any regulations applied to it, just because it is acquired by lease, that are not applied to a company-owned piece of equipment.

Q. I would like to ask you at this point, Mr. Sutherland, whether you operate any such equipment under long-term lease yourself?

A. I do.

Q. Do you find any distinction in control and identification of that equipment as compared with equipment which you own?

A. No, there is no difference.

Q. Now, we get down to some differences not so much of substance between your committee's suggestions, but differences which appear to relate primarily to policing. I think we have already covered in our statement on the termination of leases at a point other than the carrier's ter- [fol. 1434] minals, the difference here. The Commission's proposed Rule 2 does not permit termination of a lease by

the carrier at such points. Our rule does. Do you see any difference?

A. We don't see that there is any difference whether it is terminated by an agent or by an employee or by the terms of the lease itself in the conditions certain. The thing has to be established in case the vehicle is involved in some question of liability as to who is operating it. This may be partly the answer to Senator Wheeler's question a while ago. The thing that has been bothersome is that it was difficult to find out under whose service a piece of equipment was operating. In our suggested rules, we believe it is possible under these suggested rules to go into any carrier's office or look at any vehicle at any time and instantly know under whose authority that piece of equipment is operating. We tie that right down.

Q. And you think that is sufficient policing?

A. As long as that is accomplished, it makes no difference at all whether it is terminated by an agent or by an employee or by a condition certain there in the contract.

Exam. Lawton: Mr. Idol, how many more questions do you have on direct?

Mr. Idol: We will probably have another fifteen or twenty minutes.

[fol. 1435] Exam. Lawton: We will take a five-minute recess.

(Short recess taken.)

Exam. Lawton: Come to order, gentlemen.

By Mr. Idol:

Q. Mr. Sutherland, another of our minor differences there is that our suggested rules do not require that leases show the time they begin or become effective and the time they end. Have you explained that situation? Are your reasons for not including a time in the proposed regulation?

A. Many of the operations of the carriers are not susceptible of a time. I go again to the same explanation I have given before that the purpose of a lease as to time of either starting or ending is to be able to properly identify at any time who a vehicle is working for and what carrier's re-

sponsibility therefore applies. As long as that is made clear, it seems to us that the element of time is one which had better be left out: A time certain put in as ten o'clock in the morning might not at all be applicable as long as the lease expresses in its terms and it is susceptible of identification as to whose responsibility that equipment is operating under the purpose can be accomplished without going to such a fixed standard as time which would not be practicable.

If a vehicle couldn't complete its trip, you would have a case of where a lease had expired and still the vehicle was operating under the carrier, so the conditions seem to be more important than time.

[fol. 1436] Q. Would you give the same answer to the paragraph numbered three on page 2 of Exhibit 12 covering the fact that your suggested rules do not require execution and delivery of a receipt when a lease begins and ends?

A. That is right. That would be the same line of reasoning.

Q. Under paragraph 4 of page 2, I note that your proposed rules or your suggested rules do not require that compensation be on a time or mileage basis. The Commission's rules would require that.

A. Our thinking in that regard, sir, and the reason we left out any such requirement in our rules, as first twofold. First, the private right of contract between two individuals is not, we feel, a proper subject for a regulation unless and until it can be shown that it is in some manner inimicable to the public interest.

The second point, and the one on which we will hang more importance, is that it makes no difference what formula you use to execute. You can always arrive at the same result. It is meaningless and it would just add a burden that doesn't have any place in a regulation of this type. You can arrive at the same result by applying dozens of different formulas, as was pointed out here yesterday in the cross examination of Mr. Blanning. It just doesn't serve any purpose and it is a proper subject of private contract between the two contracting parties.

Q. Now, Mr. Sutherland, your suggested rules don't re-

quire precise manifests showing the detail of the proposed [fol. 1437] rules required in the order?

A. The terrific amount of detail work that it is now necessary for the carriers to do in the conduct of their business would be a duplication of information that is already in the records. We do provide for the proper keeping of identification records which will suffice to cover every purpose that the Commission could possibly expect to get by the requirement of this manifest and there is no reason for duplicating all that information in the files of the carriers.

Q. And your suggested rules do require that some type of papers be carried on leased equipment?

A. Oh, yes, either our suggested rules or the present accounting and record rules of the Commission would require that all this information be in the hands of the carrier.

Q. The Commission's proposal would require the carrying of a copy of a lease agreement on any leased equipment. The alternative your Committee suggests is that a certificate may be carried instead of the lease, identifying the carrier and certifying certain matters, compliance with safety rules and regulations. Is there any particular reason for suggesting that alternative?

A. Yes, the fact that the lease itself in many cases might be a pretty cumbersome document. There is no reason for the actual lease being on the vehicle. We wholeheartedly agree with the Commission that they should be able to identify at any time that there is a lease in existence and [fol. 1438] we require a certification to be carried on the vehicle in our suggested rules certifying that the vehicle is operated under lease and that the requirements of the Commission as to safety rules and driver's qualifications, etc., have been met and that we also require the signature of the contracting parties and of the person who is responsible for having made the necessary inspection and found compliance with the safety requirements and the driver qualification requirements.

Q. Number 7 point is that your committee's proposal suggests retention of records for one year instead of two years as the Commission proposes?

A. Yes. Practically all of the papers that the carriers are now required to keep in their files under the present

preservation of records rules of the Commission would have to be kept far in excess of the one year that we have proposed. Those other papers which would come into being through the imposition of these rules that we propose would not be of sufficient information or importance and they would be burdensome from a space standpoint if they were required to be kept for more than one year. All the information necessary would be in the other records of the carrier which are now required to be kept far in excess of the one-year period.

Q. A number of your committee's suggested rules are in general agreement with many of those the Commission has proposed. Does your committee feel that there are abuses [fol. 1439] in leasing of equipment, Mr. Sutherland?

A. Well, the committee has no doubt but what there are some abuses in operations now extant and has as much information as the Commission has on it because the Commission gave us that which they had and we have developed some other information ourselves. I would like to point out here, though, that the analysis of those abuses, while they are under the general subject of leasing, the great majority of them could be and are practiced just as often with company-owned equipment as they are with leased equipment. The fact that the equipment was acquired by lease is not the controlling factor in the fact that an abuse is taking place.

Q. I think we can pass these points on which we are in general agreement, Mr. Sutherland. They are listed in the exhibit. They speak for themselves.

Is it proper to say that as a group your committee is in agreement with the Commission's feeling that regulation of some type for policing is necessary and that your recommendations as to that type of policing coincide with the regulations proposed by the order to the extent noted here?

A. That is correct. Our committee feels that in the interest of policing the situation there should be some additional rules regarding identification, a tightening up and clarification of some of the existing safety rules which are being, to a certain extent at least, ignored, we think, illegally. [fol. 1440] Q. Now, Mr. Sutherland, going to the interchange of equipment, the proposed Rule 3 as you have heard

it interpreted by Mr. Blanning in this hearing restricts interchange to trailers only. Your proposal would not have that effect?

A. No, that is quite true. We developed a great many instances all over the country where carriers operate straight trucks instead of tractor-trailer equipment. We have developed many cases of where brake hook-ups, light hook-ups, air brakes versus vacuum, etc., make it impractical to unhook the power from a trailer. We have been unable to see where there is any difference as to whether or not a trailer goes through or whether the entire piece of equipment goes through provided all the other recommended rules on interchange are experienced and practiced by the two carriers, or three, as the case might be. Just because in certain sections of the country it is more economically sound to use straight trucks doesn't seem to us to be a compelling reason why they in that part of the country should have been deprived of interchange arrangements, which are in the public interest and completely permissible by law, as far as common carriers are concerned, and may be permitted for other carriers by the Commission. They are permissible by law and just because they happen to use a straight truck instead of a tractor-trailer, we don't feel that is an important point.

The important point again is to be able to be sure that at [fol. 1441] any instance it is easily ascertainable under whose authority and over whose routes a piece of equipment is being operated and that goes just as strongly to power equipment as it does to trailers. It doesn't matter at all whether the whole thing has been interchanged, whether only part of it has been interchanged, or whether the freight itself has been interlined. The important point is that the operations are being at any moment conducted by a company who has authority to operate in that manner.

Q. You have also heard the interpretation by Mr. Blanning that under the language of the Commission's proposed Rule 2 authorized carriers would be prohibited from exchanging equipment under any circumstances except where they interchange in accordance with Commission interchange rules, which are again restricted to trailers and which, as Mr. Blanning says, would completely prohibit

the leasing of equipment between authorized carriers. Your suggested rules do not have that effect, is that correct?

A. Yes, sir, that is correct. We don't have it. We don't see any reason for discrimination in the matter of being able to divest yourself of the unneeded chattel by lease just because you happen to be a carrier. That same prohibition does not exist to anyone else who is not an authorized carrier. Just because you happen to be a carrier is no reason in the world why you shouldn't be allowed to lease a piece of equipment that you are not at that moment needing yourself.

[fol. 1442] Q. Can you think of any reason why you personally should be able to lease the equipment of a private carrier and be prohibited from leasing the equipment of a brother common carrier?

A. Of course not.

Q. Now, Mr. Sutherland, your suggested rules do not limit the application of the interchange privilege to common carriers. What is the position of your committee in that respect?

A. Well, our position is simply this: The interchange of equipment between common carriers is permissible in the law at the present time. The law would have to be changed if it were to be prohibited. We don't know whether the Commission is ever going to grant that same privilege to any other class of carriers except those which are permitted to do so under law, but if the Commission by its order does so after any proceedings, these same rules should apply.

Q. Your committee is in effect taking no position on the question of whether interchange rules should or should not be restricted to common carriers in this proceeding?

A. No, not in this proceeding.

Q. We have already covered the fact that your suggested rules are not limited to trailer equipment. We now come to the question raised by the fact that the Commission's proposed rules would limit interchange to circumstances or to cases where neither of the interchanging carriers served both origin and destination. What is your committee's po-

[fol. 1443] sition on that?

A. The committee's position is, as I explained before,

that as long as a piece of equipment is easily identifiable as being in proper service at any one time, there need be no further restrictions. Many carriers have a regular route operation with off-line named points, some of them quite distant from their regular routes. Many times they might want to and should in the interest of better service interchange equipment to a point that they are authorized to serve with another carrier. Circuity is another item which was developed here yesterday on cross examination. Many times circuity can be obviated and the service to the shipping public improved by the interchange of equipment. We see no necessity for the prohibition of interchange between points where both carriers might have the right to serve. They, of course, must have a common point of service in order to effect the interchange.

Q. Under the Commission's proposed rule, the use of the authorized carrier's driver would be required where equipment is interchanged. May we take it that your committee's reasoning on this point is precisely the same as it would be with reference to the question under leasing arrangements where there is distinction between whether or not a driver must be an employee?

A. That is very largely true, yes. It doesn't seem again that it is very important what the relationship is of that driver to the particular operating company. The operating company has the obligation under the law and under the [fol. 1444] rules at the present time to have in its files evidence as to the hours of service of the carrier while it is on their route, evidence as to his physical condition, and evidence as to his knowledge of the driving rules and the safety rules of the Commission and so forth, including the drivers' logs. As long as he is complying with those and has that covering all the period that the man is over his routes, as long as he has complied with those requirements, we feel it doesn't make any difference as to whose payroll he is on.

Q. Mr. Sutherland, there are some major differences between your suggestions for interchange or regulation of interchange and the Commission's proposed rules that we found it hard to draw a further definite comparison. Have

you anything to say not covered by this exhibit on the plan which you suggest for interchange in equipment?

A. I don't think so at this time, counsel.

Q. Then going to the suggested rules covering the rental of equipment to shippers by authorized carriers, as you will recall the Commission's proposed rule would prohibit such rentals except under very restrictive circumstances. What is your committee's feeling on that situation?

A. We believe that again is a misconception of what takes place and of a condition which should be prohibited and is prohibited by law at the present time but that the suggested method of handling that by the Commission is highly [fol. 1445] discriminatory and impractical. There is no more justification in this case than in the previous case for saying just because a person happens to be a carrier he can't divest himself of a piece of equipment by lease for a period of time to anyone who wants to lease it, regardless of whether he is a shipper or not. If a shipper is in a position to call up a so-called truck rental company and get a piece of equipment for a day or two days or a week or a month or whatever may be necessary, there is no reason why he couldn't call up and get the same piece of equipment to use in his business from any carrier who might have that piece of equipment available. There is no reason to discriminate against him just because he happens to be a carrier. We are satisfied that the thing that the Commission is driving at—and we think they should—is that the use of that sort of an operation as a subterfuge which probably could be classed as rebating. A carrier could give a preferential rate to a shipper in leasing a piece of equipment to him or from him which could be used as an influence to get his business over the line of the carrier and to that extent certainly would be a rebate.

We have the case where you haul a shipper's piece of equipment in our business the same as the rails have it in their business under the rule of Burthen and we have many shippers who have special equipment and trailers and we haul it for them. We provide the same suggestion [fol. 1446] in there that we do in the reverse direction. Either the schedules or the tariffs of the carriers should show the charge which they are going to make for hauling

that equipment in the case where the shipper is the lessor or the charge which they are going to make to the shipper in the case where the carrier is the lessor. We think it should be published in the tariffs or schedules of the carrier so that it will be subject to review by the Commission to judge the grounds of rebate. We recognize that there are some cases where a carrier might not have that in his tariffs or schedules and still be in a position where it would be advantageous to both parties for a spot lease to take place and that would be usually a case where a carrier would lease a piece of equipment from a shipper to perform a service for him. So we have provided further the rule that in case it is not in the tariffs or the schedules then you should notify the Commission immediately by letter giving the terms and the reasons therefor so it will be subject to a look-see, if you please, to see whether it was legitimate or constituted rebating.

We believe that under that rule any case where a carrier leased to or from a shipper with whom he was also doing business a piece of equipment and did not provide that charge in his schedules or did not notify the Commission, he should be subject to prosecution for evading the rules. [fol. 1447] Q. Now, Mr. Sutherland, the Commission's proposed regulation had in it Rule 2-K which referred to some formal exemptions. You have carried that forward in your suggested rules?

A. Yes, we carried those forward.

Q. In addition, your suggested rules provide that none of these regulations should be applicable to the leasing of equipment which is used wholly within a municipal zone. What is your committee's thinking on that point?

A. Well our thinking was two-fold on that. In the first place the operations of trucks wholly in a commercial zone are exempt from the Commission's orders to a very large extent anyway. None of the abuses that the Commission has called to our attention or none of the abuses that we have found ourselves exist wholly within the metropolitan area. There is a tremendous amount of leasing that goes on even with line-haul carriers. They wake up on a Monday morning and need three or four extra trucks to deliver freight that has been brought over the road over

the week-end. They have called up a truck rental company—Hertz or somebody else, as a typical type of business that goes on over the country—and they will get three or four extra trucks and use them on Monday or Tuesday to get rid of that overflow of freight. We don't think that that type of operation constitutes any danger whatsoever to the industry or has any effect at all on the so-called abusive practices that are the subject of this hearing and that the work of the Commission in policing the situation [fol. 1448] and helping to bring order out of what we admit is partially a chaotic condition at the present time would be much lessened if these rules were not to apply to any leasing operation wholly in the municipal area.

Q. On our final point, Mr. Sutherland, did your committee feel that after getting through with all its work and getting it all wound up it had made some suggestions which could be applied to all circumstances all over the country without causing any particular trouble?

A. No, we have several cases of where we think even these rules that we suggest probably would work an undue hardship and would not serve any purpose whatsoever.

For instance, while we have stressed all the way through the need for proper certification and proper identification of vehicles, we think that that is one of the big keys to the whole problem that confronts us. We have conditions with the oil field carriers and since they are going to speak for themselves possibly I am being presumptious in saying this, but it applies to other classes of carriers as well as to the oil field carriers, where vehicles have to be interchanged between carriers by lease or some other arrangement right on the scene of construction where there may not be the principal of either company present which could conclude it. You might hold up the entire laying of a pipeline for several hours if you had to wait for the principals of those [fol. 1449-51] companies to get out there in order to effect an interchange and yet that is the only method by which a truck could be gotten onto the job quickly.

Therefore, we have suggested a procedure where any carrier or group of carriers or type of carriers who found that these suggested rules would be impractical in their operation could make application at the district director

level to the Interstate Commerce Commission asking for relief in whole or in part, giving proper notice to other carriers that they were seeking this relief, and setting forth in that application the steps they were willing to take to stop any abusive practices which might be alleged or grow out of the fact that they were relieved from these rules either in whole or in part. We think that that should be done at the district level because it is necessary to do it fairly rapidly if it is to be effective in many cases in emergencies. We don't think that a carrier should be placed in the position of having to do something in the interest of serving his clients and the public which would put him in violation if he did it. We think the district level is the proper place to take it. We further provide that in case anyone opposes that or either party, the proponent or the opponent, wants formal procedure, in our suggested rules that the procedure would come on up to the Commission level. We make a recommendation that there be a provision at the district level for exemption from these rules.

[fol. 1452] Exam. Lawton: Do you wish to be heard now, Mr. Davis?

O. R. Davis, was sworn and testified as follows:

Direct examination.

The Witness: My name is O. R. Davis, Secretary-Manager, Oil Field Haulers Association, a non-profit association of motor carriers authorized to transport oil field equipment and in some instances heavy machinery in addition to oil field equipment between nearly all points of the United States. The association consists of approximately 300 motor carriers domiciled in eight or more petroleum producing states. Our headquarters is Austin, Texas. Our mailing address is Box 922. I appear here as an officer of that corporation to get into the record a statement to show the abuses and evils arising from leasing of trucks and the need of regulation to prevent these abuses.

Mr. Examiner, shall I read this statement? I do have approximately 40 copies available here.

Exam. Lawton: Distribute them to those who desire copies. I would like to have a copy.

Off the record.

(Discussion off the record.)

Exam. Lawton: On the record.

If there is no objection, Mr. Davis' statement will be marked for identification as Exhibit No. 13.

[fol. 1453] (Respondent's Exhibit No. 13, Witness Davis, marked for identification.)

By Mr. Kirtsinger:

Q. Mr. Davis, your organization consists of oil field haulers, is that right?

A. That is right.

Q. And those carriers are specialized in the business of transporting oil field equipment?

A. That is correct. I want to state here that our association is principally for the purpose of publication of rates filed with the Interstate Commerce Commission and various state commissions.

Q. But in connection with those functions, you do meet from time to time and discuss other problems that are prevalent in your industry, do you not?

A. That is right.

Q. Now, your organization received a copy of the proposal of the Commission pertaining to this leasing proposition?

A. That is correct.

Q. When you received that, will you state whether or not you called your organization to a meeting?

A. There was a meeting properly called for the purpose of discussing the request, as we term it, of the Interstate Commerce Commission, to submit any matter we care to in connection with the leasing of trucks. That meeting was followed by several other meetings before which, however, a mimeographed copy of the Commission's order was sent [fol. 1454] to each member with a request that he submit, if he couldn't attend the meetings, any suggestions he might have to offer in that connection or any report of abuses of

the leasing of trucks that he might have to offer to the association. A committee of five was appointed to make further investigations and determine what recommendations we would make and also point out what particular abuses of the leasing of trucks should be imparted to the Commission. This was prepared considerably ahead of Mr. Blanning's testimony relative to abuses, but peculiarly that nearly coincides with the statements of what his field staff found of where there were abuses.

Q. Mr. Davis, the members of your association are carriers domiciled in the State of Texas, are they not?

A. Domiciled in nine states, most of whom are in Texas.

Q. Do those carriers as a general rule own all of their equipment?

A. Yes, sir.

Q. Is leasing of trucks by such carriers prevalent in the conduct of their business?

A. No. The results show that very little leasing is done. There are a few carriers who stated they have some trucks leased. They pointed out that the manner in which these trucks were leased in many instances made them really employees of this carrier and he may have had two trucks or three trucks that they are leasing but he at the same time is performing other services, in many instances, in connec- [fol. 1455] tion with that carrier's operation. He may be in some instances an office manager. I know of some instances where they are mechanics. But as a whole there was very little leasing of trucks being done up until recently and when I say recently, that is since the end of the war.

The Texas Railroad Commission has prohibited leasing. They prohibited it during the emergency and they cancelled that order about the latter part of 1945.

Mr. Ellis: Mr. Examiner, I don't know what the ramifications of this are and it applies only to these oil haulers so I don't know that I am very much interested, but I submit that if the Texas Commission has taken any action forbidding leasing that the order of the Texas Commission would be the best evidence and I don't want to sit idly by and let it get into this record without being challenged that the Texas Commission has prohibited leasing generally

unless such an order be produced. I am objecting to the statement going in the record in this form.

Exam. Lawton: I believe the Bureau of Motor Carriers is going to make an attempt to get the rules, if there are any, of the different states and have them available.

Mr. Ellis: That is what I understand and I think that is wholly improper.

[fol. 1456] Mr. Kirtsinger: We will withdraw that statement.

The Witness: I only wanted to bring out when these evils and abuses of truck leasing began to occur. That was in connection with several carriers who just abandoned the idea of owning any trucks at all and engaged in this oil field trucking business.

By Mr. Kirtsinger:

Q. In your statement that you have prepared and offered as Exhibit No. 13, you have enumerated some of the abuses that prevail, have you not?

A. Most of them, yes, sir.

Q. And you have also made certain recommendations resulting from the various meetings and the investigation of your committee, isn't that right?

A. That is right.

Q. And y u desire to offer Exhibit No. 13?

A. Yes, sir.

Q. As your testimony in support of your position in the matter?

A. Yes, sir.

Q. Do you have any other statement that you desire to make in the matter?

A. Well, I would like to go a little further. One of our recommendations there is that trip leases be granted only when an emergency exists and then only by the consent of the district supervisor, supervisor of the district in which it occurs. I mean by that the Interstate Commerce Commission district. That idea is to prevent the abuse of the [fol. 1457] use of these trucks and where they are termed here gypsy trucks we call them in Texas "hot" trucks. They have irresponsible drivers, and they are very poor in most senses of equipment and do not comply with the safety

regulations of the Commission as to hours of service or proper lights, brakes or other safety regulations. We suggest where an emergency does exist and this applies to oil field haulers only, that the district supervisor be contacted and given complete information on the type and operator of the truck so he can grant it if there is an emergency. There are cases of emergency occurring in oil field equipment transportation. Many times a well may be in trouble and in need of the services of some equipment and the truck operator is available but may not have enough trucks to transport these commodities quickly to this well that may be in trouble or may be in need of casing because it has been brought in.

Q. Do those emergencies occur frequently?

A. I wouldn't say frequently. My observation is that they do not occur frequently but when they occur it is like a man needing a six-shooter. When he needs it he needs it.

Q. When that emergency exists does the carrier ordinarily lease equipment from other carriers?

A. If they are available, but there are times, probably, when the other carrier's equipment may be all in use. They pursue the course at all times among oil field carriers and have in the past, that they do not lease equipment. They [fol. 1558] employ that carrier to assist them in the movement. They become shippers for the owner of the property and deliver to an authorized carrier these commodities for transportation to destination, paying him his published rates for the services rendered.

Q. Does that conclude your statement, Mr. Davis?

A. Yes, sir.

Mr. Kirtsinger: That is all.

Exam. Lawton: Any questions?

Cross examination.

By Mr. Burton K. Wheeler:

Q. I noticed on page three that you stated that these carriers depend almost entirely on the use of owner-driver equipment under very dubious arrangements. They carry on their operations with a limited staff of supervisors and

personnel. When they have the owner-drivers, that is one reason why they do not have to comply with all the rules and regulations of the Interstate Commerce Commission, is that correct?

A. Well, if there is a rule effective or if the law makes it illegal, it is almost a matter of impossibility with the limited field staff that the Interstate Commerce Commission has to stop those people from operating.

Q. That is one of the reasons why the Commission is seeking to adopt these rules, as you understand it?

A. That is right.

[fol. 1459] Q. Not that they want to injure somebody or to destroy someone, but so it will make it easier for them to find out when they are violating these rules.

A. That is correct, sir.

Q. I note you say "They may perhaps maintain records of hours of service and reports covering their own few drivers, but with their limited control and supervision over the owner-drivers, they do not require logs, medical certificates from the drivers of the so-called leased trucks. This results, of course, in hundreds of trucks traveling the highways in complete disregard of hours of service and regulation or other service regulations."

You read the report put out by Mr. Blanning and you will recall, will you not, that it not only applied to the oil situation, but it likewise applied all over the country with other carriers.

Mr. Lieberman: I object, if Your Honor please, this witness is not qualified to testify regarding other types of carriers than oil field carriers.

Mr. Burton K. Wheeler: I didn't ask him that. I asked him if he had read Mr. Blanning's report and if it didn't show that it applied to the others.

Mr. Turney: Mr. Examiner, I object on the ground that this witness' interpretation of Mr. Blanning's testimony is of no import in this proceeding.

[fol. 1460] Exam. Lawton: I think Mr. Blanning's testimony will speak for itself.

By Mr. Burton K. Wheeler:

Q. I notice you further say in order to comply with regulations it is necessary to maintain garages and equipment, hire competent mechanics and supervisors, tire men and other personnel trained to maintain equipment and make almost daily inspections to see that it is properly equipped and so forth?

A. That is correct, Senator, for this reason: I might add that an oil field hauler has to have these men available. Of course, our equipment does not at all times stay on a paved road. You know, we get out to locations where geologists find the oil wells which are not always close to a paved highway. Consequently, your equipment is in use in those fields and often we build our own roads to get into locations. They are badly abused and need daily observation as to safety, brakes, lights and other requirements of the safety regulations.

Exam. Lawton: The oil wells aren't all in public parks in the cities, that is right.

By Mr. Burton K. Wheeler:

Q. Then on page 4 you say "The carrier-owner, owning only a few pieces of equipment and who depends largely on leased equipment, maintains no trained personnel. He depends entirely on the outside garages for his mechanical work and the outside garages have little or no knowledge of the safety devices or equipment required by the regu- [fol. 1461] lation. Neither does he have any control over the equipment he leases. In fact, he cares little for the safety regulations. So the same conditions exist." and so forth.

Mr. Ellis: I would like to object, Mr. Examiner. These questions are simply reading the witness' testimony which is in exhibit form and asking him if he said what is written down here in black and white.

Mr. Lieberman: I join in the objection.

Exam. Lawton: You are taking up quite a little time, Senator. We would like to get through with one more witness, if we could, tonight.

By Mr. Burton K. Wheeler:

Q. Are you familiar with the practices outside of the oil industry?

A. No, sir, I do not pretend to be. We stated at the outset as to their regulations, that these regulations that we asked for should not be applied to all the rest of the industry, because they may have their own peculiar problems with which we are not acquainted.

Q. You are simply pointing out what the effect of leasing is in your particular industry?

A. That is right, sir.

Mr. McAuliffe: I couldn't quite hear the witness. Did you say your recommendations apply only to the oil field hauler?

The Witness: That is correct.

Cross-examination.

[fol. 1462] By Mr. Ellis:

Q. I understand from page 2 where you say representing approximately 350 motor carriers, are they members of your association or are some of them non-members?

A. Some of them are members of the Kansas Association and the Oklahoma Association, probably some other state associations that are affiliated with the A.T.A. through their various state associations.

Q. I will get to that in a moment. Then it is a fact that this 350 figure does not represent the membership of your association, is that right?

A. There are approximately fifty who are not members, but then I am telling you why this figure was put in there.

Q. All I want to know at the moment is if the 350 are all members of your association? They are not?

A. No.

Q. How many are not members of your association?

A. Approximately 50.

Q. Who do they belong to or where are they from?

A. They came from Kansas, Wyoming, Colorado and Oklahoma. They represent the A.T.A. Conference of the Oil Field Haulers Division. They were at the conference during the past week.

Q. Of these 350 motor carriers, some belonging to your association and some not, that you say you represent here, could you give us the average number of pieces of equipment which they own?

[fol. 1463] A. I am giving you this now from memory of a survey made for the War Department last year.

It was to ascertain as near as possible the number of pieces of equipment that these carriers operate. The average, I would say, is about seven, not including other equipment such as bulldozers and caterpillars and drag lines. But there are carriers operating as many as a hundred pieces of equipment and I would say that the pipeline contractors all operate practically 100 pieces of equipment.

Q. Do I understand you that of these 350 people the average number of trucks is about 7, is that right?

A. That is my guess only.

Q. Then your own people fall in this class of carriers that you are denouncing on page 3 of your exhibit, is that right?

A. No, not any of our people.

Q. Don't you there say that these people who own from one to seven trucks are the ones you are complaining about here?

A. Well, I am talking about those that are practicing those abuses. It so happens that none of them belong to us, as I recall. They may, I don't know. These reports are gotten from this committee. It may be that some of them do belong, I don't know.

Q. Then if they belong to your association and own seven trucks, they do not indulge in these practices, but if they don't belong to this association they do, is that your testimony?

[fol. 1464] Mr. Kirtsinger: I think that is purely argumentative and I can't see any helpful purpose.

Exam. Lawton: I think so.

By Mr. Ellis:

Q. In any event, you were not talking about your own people?

A. I will say this, regardless of whether he is a member

of the association or not, it doesn't make any difference. I believe I do recall the committee making a verbal report that they found that in some instances some of those carriers were going through—were being forced to meet competition in that manner, leasing those wildcat trucks, irresponsible operators.

Mr. Ellis: That is all I care to ask.

Cross-examination.

By Mr. Diehl:

You said in describing the operations of your members when an emergency arises they get hold of one another and use each other's equipment, is that correct?

A. That is right.

Q. Is it your recommendation they not be allowed to do that without prior approval of the Interstate Commerce Commission?

A. That is not leasing.

Q. Did you hear Mr. Blanning's testimony here about interchange or exchange of equipment as to whether it is leasing or not?

A. They are not interchanging. They are operating their own equipment. If a carrier gets a job to move a drilling rig, we will say, from a point in Texas to a point in New Mexico, and he doesn't have sufficient trucks avail-[fol. 1465] able to move that million or so pounds of freight, then he will ask for another carrier who is a participant in the same rates as he is, usually. He doesn't have to be, because he is an authorized carrier to perform that same service between the point in Texas and New Mexico and this carrier will merely employ him to assist him in that movement and pay him at the prescribed hundredweight rate for whatever amount of weight he hauls.

Q. What is your interpretation of the relationship between the two certificated carriers under those circumstances?

A. My interpretation is that the carrier in that instance has contracted with the shipper to deliver the products and he has employed this other carrier and he becomes a shipper, so far as that other carrier is concerned.

Q. You mean the first carrier that gets the contract becomes a shipper as to the second carrier?

A. That is right.

Q. Well, it is not his goods, is it?

A. No, but he is responsible and he has already contracted to deliver it to the point in New Mexico.

Q. And in utilizing the second carrier's trucks, you don't think he is leasing them?

A. No, he is paying them the hundredweight freight for the amount he hauls.

Q. Does the method of compensation determine whether it is lease or not?

[fol. 1466] A. Oh, no, the published rate.

Q. Perhaps you didn't understand my question. In your opinion, does the method of compensation by the first carrier of the second carrier determine whether or not the relationship is one of lessor and lessee?

A. I don't understand your question?

Mr. Burton K. Wheeler: Let's call it a conclusion upon a legal proposition. He is not a lawyer.

Mr. Diehl: This gentleman, Mr. Senator, is expressing a whole lot of opinions about practices and other things and I want to know what he thinks the import of those opinions is.

Mr. Burton K. Wheeler: You are calling for a conclusion of the witness, and a legal conclusion at that.

Mr. Diehl: The principal reason, if I may suggest, was that Mr. Blanning sat here and testified as to a similar relationship between two carriers authorized to serve between two points and he said if they used each other's equipment, as I understood him, it would be interchange, which is prohibited by his proposed rules. This man says they do the same thing but it is not an interchange, it is not a lease. The first carrier becomes a shipper.

Mr. Burton K. Wheeler: I still submit that it is calling for a legal conclusion.

Mr. Diehl: That is enough. I will not even question him any more.

[fol. 1467] Exam. Lawton: Anyone else?

Mr. Floyd: May I, please, sir?

Cross-examination.

By Mr. Floyd:

Q. Referring to page three of your exhibit, you say these carriers depend entirely upon the use of owner-driver equipment and so forth under rather dubious arrangements and so forth. Do you believe that when you talk about handling this without any type of leasing that you would stop the things you have mentioned there or would they continue to perform that same type of service?

A. I think probably they would perform it but if it came down to straight regulations of the Interstate Commerce Commission as to equipment and safety regulations and observance of the published rates, some of the same ones now in the business may continue to lease their trucks. If they continue to lease their trucks rather than to bring them up to the requirements of the safety regulations.

Q. These gentlemen are now, according to your statement, violating the law as to safety regulations. Do you think one more regulation would stop them from violating the law?

A. Well, I think if the leases were subject to the approval of the Interstate Commerce Commission that it might have some effect on removing some of the abuses.

Mr. Floyd: Thank you, that is all.

[fol. 1468] Cross-examination.

By Mr. Hobmann:

Q. As I understand it, you testified that your association is opposed to leasing except under emergency conditions and it says here "no lease to be permitted excepting bona fide term leases." Is that right? What prevents your association now from following the policy of only executing leases under emergencies and under these conditions without any regulation? What prevents you from doing that even now?

A. Because it is permitted to meet competition in many instances.

Q. In other words, you want this regulation to satisfy

competition and it is not a question of satisfying the leasing practices?

A. And prevent discrimination to the recipient public.

Mr. Burton K. Wheeler: These practices tend to break down, do they not, the whole rate structure?

The Witness: They do. They also promote discrimination.

Cross-examination.

By Mr. Lieberman:

Q. As I understand it, your association or the group that you represent number approximately 350 oil field carriers?

A. That is right.

Q. How many other oil field carriers are there in the same area who are not members of these various associations?

A. I couldn't tell you, sir.

Q. You have no idea at all?

[fol. 1469] A. Well, the last report I saw of authorized carriers in the United States of oil field equipment, that is, using the terms as applied in those certificates or orders of the Commission, it was approximately 650 in the United States. A lot of those carriers are domiciled in Pennsylvania and probably out in Montana. They are recently getting pretty large numbers out on the west coast due to the activity out there of the producing companies.

Q. How many carriers, then, are there whom you believe to be engaging in these practices which you are condemning in your area?

A. The report of the committee showed, when they made this survey, approximately 35 or 40.

Exam. Lawton: If there is nothing further, you are excused.

(Witness excused.)

Mr. Burton K. Wheeler: But that would be approximately ten per cent and ten per cent carrying on these practices tends to break down the whole rate structure.

Mr. Davis: Yes, sir.

Mr. Kirtsinger: I have one more witness, Mr. Examiner.

Mr. Idol: Mr. Examiner, may I offer in evidence at this time Exhibits 5 to 12?

Exam. Lawton: Is there any objection?

Mr. Eldred: Can you wait until we have cross examination, Mr. Examiner?

[fol. 1470] Exam. Lawton: On which ones?

Mr. Eldred: The whole group.

Mr. Lordan: I object to those two tabular exhibits without further opportunity for cross examination.

Exam. Lawton: All right, we will defer them.

Mr. Kirtsinger: I offer Exhibit No. 13.

Exam. Lawton: It will be received.

(Respondent's Exhibit No. 13, Witness Davis, received in evidence.)

D. A. VANDAVEER was sworn and testified as follows:

Direct examination.

By Mr. Kirtsinger:

Q. Your name is D. A. Vandaveer?

A. That is correct.

Q. Are you one of the partners of G. R. Vandaveer & Son?

A. I am.

Q. Where are you located?

A. Neodesha, Kansas.

Q. What is the business of your company, Mr. Vandaveer?

A. Pipeline stringing.

Q. Will you describe what pipeline stringing is?

A. It is taking pipe from the railhead or the rail car, loading it on a truck and trailer, hauling it out to the pipeline right-of-way wherever it may be, and trucking it along the right-of-way.

[fol. 1471] Q. Now, in performing that type of service, does it require special equipment?

A. Yes, sir.

Q. And will you describe the various types of equipment that are used in the business?

A. To load the pipe and unload the pipe from the car and onto the truck is what we call a gin truck. That is a truck with a crane pole type on the back end which is sufficiently heavy to unload all types of pipe, heavy and light, and then we have to have side boom tractors to boom the pipe from the truck when we string it along the right-of-way. We have to have tow tractors with winches to pull the trucks in and out of the right-of-way when the train is such that you have to pull them. We have to have pole trailers which are hooked to our trucks with a fifth wheel to haul the pipe.

Q. When you get into swampy and wet country, do you require any other type of equipment?

A. We have mud sleds and Athey wagons to haul the pipe into the swamps.

Q. Is it necessary for your drivers and other employees to have any particular experience or knowledge in order to properly perform the type of service that is conducted by your company?

A. It is. We think it takes a good year to get a good pipe stringing driver. He has to be able to drive over the road as well as pull in over the road and go over all types [fol. 1472] of terrain, through sand, mud, hills, swamps.

Q. Is any one particular job that you might be on the same as the other jobs, as far as terrain and country is concerned?

A. It may be, but generally it is a widespread operation, seasonal and goes any place in the country.

Q. Can you give us any idea as to the percentage of your operation that is performed on public highways in comparison to that performed out in the field, and alongside the rail car unloading?

A. Well, very little of our operation is on the highway. I would say 95 per cent of our operation is over the pipeline rights of-way and off the highway.

Q. Do you own all of the equipment that you operate, Mr. Vandaveer?

A. We do.

Q. And do you have a substantial investment in that equipment?

A. Yes, sir.

Q. Is it ever necessary for you to use equipment of others?

A. Sometimes we do have to lease equipment, but it is very seldom.

Q. Will you state the times when it becomes necessary to use or lease other equipment?

A. Ordinarily about the only time we lease equipment is when we are on a job and a large shipment of pipe is received at the rail head and to get the pipe off the cars and do away with demurrage we sometimes have to add a truck or two or maybe three for a very few days or pos-
[fol. 1473] sibly a week to get that pipe off. The situation is dependent on how much pipe comes in.

Q. Are those usually hauling trucks?

A. They are.

Q. Now then, is it ever necessary to use any other type of equipment of other carriers out in the field, more specialized equipment?

A. Once in a while we have to hire a tractor or something like that, but I don't think we have to hire anything else.

Q. When you lease or hire those pieces of equipment, are they leased on an hourly basis or how?

A. Usually by the hour.

Q. Whose driver operates the equipment?

A. The owner usually sends a driver with it. The emergency arises so that we don't have the time to get a driver, so he sends his driver with it.

Q. Do you always have foremen on each job?

A. We do.

Q. Superintendents and other men with the responsibility to direct the movement of the employees and of the equipment, is that right?

A. That is right.

Q. And those employees are full-time employees, are they not?

A. That is right.

[fol. 1474] Q. How many trucks do you own?

A. 32.

Q. What facilities do you maintain for keeping that equipment in good condition?

A. We maintain a garage at Neodesha and storage space.

Q. Is it necessary to maintain facilities at other points in the country?

A. No, it is not. When we travel out of state or away from the garage if we have to have any work done we take it to a local garage in that area.

Q. By the way, your authority for performing this type of operation is nation-wide, is it not, all except California?

A. That is right.

Q. And that is between all points and places?

A. That is right.

Q. The operation is generally performed from the rail car out to the pipeline right-of-way?

A. That is right.

Q. Or to and from the pipeline rights-of-way explains it better, does it not?

A. Yes.

Q. Is yours a spasmodic operation?

A. It is seasonal.

Q. In other words, your trucks are busy only when you happen to be the successful bidder on a pipeline job, is that right?

[fol. 1475] A. Yes, sir, that is right.

Q. And are your rates always the same on all jobs?

A. No, sir, they are not. We have a rate which is published with the ICC but when we quote a rate on a mountain job or a swamp job the rate that is in that book is not applicable to the type of terrain that the swampy job goes through.

Q. So you, in instances of that kind, walk over a job and determine what a reasonable rate would be in line with your published tariff, is that correct?

A. That is right.

Q. And a supplement is filed with the Interstate Commerce Commission?

A. Yes, sir.

Q. Do you engage in any other type of transportation?

A. No, sir.

Q. You are strictly a pipeline stringer in the general terminology of it?

A. That is right.

Q. Are there other carriers in the country that you know of who engage and specialize in this particular operation?